

1       APART?

2                       THE WITNESS:   YEAH.   A LITTLE OVER AN  
3       INCH, PROBABLY.

4                       THE COURT:   ANYTHING ELSE?

5                       MR. LIEB:   THAT'S IT FOR NOW.

6                       THE COURT:   CAN HE RETURN TO THE WITNESS  
7       STAND?

8                       MR. WIYGUL:   FINE WITH ME, YOUR HONOR.

9       BY MR. WIYGUL:

10      Q.       WE HEARD TESTIMONY FROM OTHER WITNESSES, MR.  
11      BAUMERT, ABOUT THE CERTIFICATION PROCESS THE MACHINE HAS  
12      TO GO THROUGH TO BE CERTIFIED IN PENNSYLVANIA.   THE  
13      EXPRESSVOTE XL HAS BEEN CERTIFIED FOR USE IN  
14      PENNSYLVANIA AS PART OF THE EVS 6021 SUITE, IS THAT  
15      RIGHT?

16      A.       THAT'S CORRECT.

17                      THE COURT:   PLEASE MOVE THE MICROPHONE  
18      CLOSER TO YOU.

19                      MR. WIYGUL:   CAN YOU HEAR ME NOW?

20                      THE COURT:   JUST LIKE THAT, BUT YOU ARE  
21      LEARNING FORWARD.   YOU MAY WANT TO PULL THE MIKE A  
22      LITTLE CLOSER TO YOU SO THAT EVERYONE CAN HEAR YOU.

23                      MR. WIYGUL:   LET'S TRY THAT.

24                      THE COURT:   GO AHEAD.

25      BY MR. WIYGUL:

1 Q. SO AS PART OF THE PENNSYLVANIA CERTIFICATION,  
2 WAS THE EXPRESSVOTE XL CERTIFIED BY THE EAC?

3 A. YES, IT WAS. I DON'T THINK IT'S  
4 STATUTE-REQUIRED, BUT THE PENNSYLVANIA SECRETARY OF  
5 STATE HAS NOW RULED THAT IT WILL NOT ACCEPT A SYSTEM  
6 UNLESS IT IS EAC CERTIFIED.

7 Q. AND DID THAT EAC CERTIFICATION PROCESS INVOLVE  
8 TESTING FOR SECURITY ISSUES IN PARTICULAR?

9 A. IT DID.

10 Q. AND THEN AS PART OF THE PENNSYLVANIA  
11 CERTIFICATION PROCESS, WAS THERE A SEPARATE SECURE  
12 REEXAMINATION OF THE EXPRESSVOTE XL?

13 A. THAT IS MY UNDERSTANDING.

14 Q. AND WE HAVE HEARD TESTIMONY THAT THE EXPRESSVOTE  
15 XL IS REEXAMINED IN PENNSYLVANIA AS A RESULT OF A  
16 PETITION FOR REEXAMINATION THAT WAS FILED. ARE YOU  
17 AWARE OF THAT REEXAMINATION?

18 A. I AM AWARE THAT IT WAS REEXAMINED AND CLEARED,  
19 YES.

20 Q. WHEN YOU SAY "CLEARED," IT WAS ONCE AGAIN  
21 CERTIFIED, IS THAT RIGHT?

22 A. YES, THE CERTIFICATION WAS REAFFIRMED.

23 Q. THERE ARE THREE DIFFERENT TESTS RESULTING IN  
24 THREE DIFFERENT CERTIFICATIONS FOR THE EXPRESSVOTE XL  
25 MACHINE?

1 A. YES.

2 Q. HAS THE EXPRESS XL MACHINE BEEN CERTIFIED IN  
3 STATES OTHER THAN PENNSYLVANIA?

4 A. IT HAS. AS I INDICATED IN MY AFFIDAVIT, IN THIS  
5 AREA, NEW JERSEY, DELAWARE -- LET ME SEE, CALIFORNIA,  
6 OUT WEST, TEXAS, AND MISSISSIPPI, I BELIEVE.

7 Q. IS IT CURRENTLY CERTIFIED FOR USE IN ALL OF  
8 THOSE STATES?

9 A. YES, IT IS -- MY UNDERSTANDING IS YES, IT IS.

10 Q. YOU HEARD THE TESTIMONY FROM DR. HALDERMAN  
11 EARLIER. HAD YOU MET DR. HALDERMAN BEFORE THIS HEARING?

12 A. I HAVE, YES.

13 Q. WHEN WAS THAT?

14 A. BRIEFLY.

15 WHEN IN -- DURING HIS TESTIMONY IT WAS  
16 ESTABLISHED THAT HE VISITED OUR HEADQUARTERS IN OMAHA,  
17 NEBRASKA I BELIEVE IT WAS IN JULY OF 2018. AND SO I MET  
18 HIM WHEN HE DID -- WHEN HE VISITED THEN.

19 Q. AND DO YOU KNOW HOW LONG HE WAS PRESENT AT ES&S  
20 HEADQUARTERS DURING THAT VISIT?

21 A. MY UNDERSTANDING IS SIMILAR TO THE TESTIMONY  
22 FROM THIS MORNING, AND THAT WAS PROBABLY FOUR OR  
23 FIVE HOURS.

24 Q. AND YOU HEARD DR. HALDERMAN'S TESTIMONY IN THIS  
25 HEARING, IS THAT RIGHT?

1 A. YEAH, ALL OF THE PORTIONS OF THE TESTIMONY THAT  
2 ARE GERMANE TO MY EXPERTISE.

3 Q. YOU ARE AWARE THAT DR. HALDERMAN HAD OPINED THAT  
4 IT WOULD BE FEASIBLE FOR MALWARE TO CAUSE THE XL TO  
5 PRINT BARCODES THAT DIDN'T MATCH THE VOTER-VERIFIABLE  
6 TEXT. YOU HEARD THAT TESTIMONY?

7 A. I HAVE HEARD THAT, YES, IN A NUMBER OF DIFFERENT  
8 FORMS FROM HIM.

9 Q. FIRST OF ALL, LET ME ASK YOU, WAS THE XL USED IN  
10 ELECTIONS PRIOR TO NOVEMBER 28TH, 2018?

11 A. YES. THERE HAS BEEN A -- WITH ALL OF OUR  
12 SYSTEMS, THERE IS ALWAYS A SERIES OF ELECTIONS, YOU  
13 KNOW, AND WE WILL COMMONLY DO A, YOU KNOW, A SMALL  
14 ELECTION THAT DOES NOT REQUIRE CERTIFICATION AND THEN  
15 SLOWLY WORK OUR WAY TO BIGGER AND BIGGER ELECTIONS, BUT  
16 NEW JERSEY, DELAWARE HAVE ALL RUN ELECTIONS WITH THE XL.

17 Q. TO DATE CAN YOU, AND I DON'T WANT ASK YOU FOR  
18 EXACT NUMBER, BUT CAN YOU APPROXIMATE HOW MANY ELECTIONS  
19 XL HAS BEEN USED IN?

20 A. I THINK IT'S 11 OR 12.

21 Q. 11 OR 12 --

22 A. DIFFERENT --

23 Q. -- DIFFERENT JURISDICTIONS?

24 A. 11 OR 12 DIFFERENT ELECTIONS, YES.

25 Q. TO YOUR KNOWLEDGE, HAS THE ISSUE THAT DR.



1 HALDERMAN OPINED ABOUT, THE POSSIBILITY OF A MISMATCH  
2 BETWEEN THE BARCODE INFORMATION AND THE VOTER-VERIFIABLE  
3 TEXT INFORMATION, TO YOUR KNOWLEDGE HAS THAT EVER  
4 HAPPENED IN ELECTIONS USING THE XL MACHINE?

5 A. NO. I WOULD BE MADE AWARE IF THAT HAPPENED AND  
6 I HAVE NEVER BEEN MADE AWARE OF THAT HAPPENING.

7 Q. TO YOUR KNOWLEDGE, HAS THAT EVER HAPPENED IN ANY  
8 TEST OF THE XL MACHINE?

9 A. NO.

10 Q. HAS THE XL MACHINE BEEN TESTED WITH RESPECT TO  
11 THAT ISSUE?

12 A. IT HAS. IT'S A VERY CRITICAL PORTION OF THE  
13 TESTING TO MAKE SURE THAT THAT THING IS WORKING RIGHT.  
14 IN FACT, THE EAC DOES WHAT THEY CALL THEIR MILLION AND A  
15 HALF MARK TEST WHERE THEY ARE --

16 MR. LIEB: I AM GOING TO OBJECT AT THIS  
17 POINT TO HEARSAY CHARACTERIZATION.

18 THE COURT: NO, THAT'S OKAY. OVERRULED.  
19 MILLION AND A HALF MARK TEST?

20 THE WITNESS: YEAH. ANY TIME ANY  
21 TABULATOR IS CERTIFIED, YOU HAVE TO MARK A MILLION AND A  
22 HALF SELECTIONS. AND IT'S -- I THINK IT'S -- YOU ARE  
23 ALLOWED ONE MISS, BUT FOR ALL PRACTICAL PURPOSES, IF YOU  
24 MISS ONE, YOU ARE OUT. SO THE XL HAS THAT SAME -- BEEN  
25 TESTED TO THAT SAME LEVEL.

1 BY MR. WIYGUL:

2 Q. DID IT PASS THAT TEST?

3 A. IT DID.

4 Q. DOES THE XL MACHINE HAVE ANY FEATURES THAT ARE  
5 DESIGNED TO PREVENT THE KIND OF MISMATCH THAT DR.  
6 HALDERMAN DESCRIBED FROM HAPPENING?

7 A. YEAH. THE -- I MEAN THE PROGRAMMING -- THE  
8 PROGRAMMING OF THE ELECTION, THERE ARE A NUMBER OF  
9 THINGS TO -- A NUMBER OF SOFTWARE CHECKS IN PLACE THAT  
10 ARE REQUIRED TO MAKE SURE THAT WHAT COMES DOWN TO THE  
11 MACHINE IS -- MATCHES AND IS PROTECTED, SO SOME OF THE  
12 ONES WE TALKED ABOUT, BUT THAT IS -- THAT IS THE ESSENCE  
13 OF THE MACHINE AND PROTECTING THAT DATA SO THAT IT CAN'T  
14 BE INTERCEPTED AND CHANGED IS WHAT THE ENCRYPTION AND  
15 THE DIGITAL SIGNATURES AND ALL THAT GOOD KIND OF STUFF  
16 HELP WITH, AND THE PHYSICAL CONTROLS OF THE MACHINE TO  
17 MAKE SURE THEY CAN'T GET IN AND THEN THE PROCESS  
18 CONTROLS AND CHAIN OF CUSTODY, AND ALL OF THAT KIND OF  
19 STUFF.

20 THE COURT: WERE YOU PLANNING ON GETTING  
21 INTO ALL THAT KIND OF STUFF?

22 MR. WIYGUL: I WAS NOT GOING TO GO INTO  
23 IT IN GREAT DEPTH GIVEN THE TIME, YOUR HONOR --

24 THE COURT: NO. I THINK IT'S PRACTICAL,  
25 WHICH A LOT OF WHAT I HAVE HEARD TODAY IS NOT, AND IT'S

1       IMPORTANT.

2       BY THE COURT:

3       Q.       THIS MACHINE, YOU SAY, SOUP TO NUTS, DEVELOPED  
4       BY ES&S?

5       A.       YES.   AND IN PLACES WE USE CONTRACT ENGINEERING  
6       TO AUGMENT OUR STAFF, BUT IT WAS DEVELOPED WITH -- UNDER  
7       OUR --

8       Q.       ES&S DESIGNED THE SOFTWARE?

9       A.       ES&S DOES DO THE SOFTWARE ENTIRELY.

10      Q.       AND IS IT ALL DONE -- IS THIS MACHINE, WAS IT  
11      DEVELOPED -- LET ME CHANGE THAT.

12                       WHEN IT'S MANUFACTURED, IS IT  
13      MANUFACTURED IN A SINGLE BUILDING?

14      A.       NO.   THERE ARE COMPONENTS THAT COME FROM  
15      DIFFERENT PLACES, AND WE THEN ASSEMBLE THE COMPONENTS.

16      Q.       AND AT SOME POINT THE SOFTWARE IS INPUT INTO THE  
17      MACHINE?

18      A.       RIGHT.   THERE IS --

19      Q.       THAT'S IN A SINGLE PLACE?   I DON'T WANT TO  
20      BROADCAST -- I DON'T WANT YOU TO -- I DON'T WANT TO  
21      BROADCAST DETAILED SECURITY PROVISIONS THAT MIGHT CAUSE  
22      THOSE SECURITY MEASURES TO BE COMPROMISED IN SOME WAY.  
23      BUT JUST GENERALLY, IS THERE A PLACE ON CAMPUS WHERE THE  
24      SOFTWARE IS INPUTTED?

25      A.       GENERALLY, THE SOFTWARE IS INSTALLED -- OUR

1 SOFTWARE IS INSTALLED ON THE MACHINES IN OUR WAREHOUSE  
2 FACILITIES. SO WE HAVE ONE THAT IS PART OF ONE OF OUR  
3 BUILDINGS ON OUR CAMPUS. WE HAVE ANOTHER SECURED  
4 LOCATION. SO WE HAVE OVERFLOW WAREHOUSES THAT ARE  
5 EQUALLY PROTECTED.

6 Q. AND IT'S INSTALLED, I ASSUME, HOW? USING  
7 ANOTHER COMPUTER, USING A DEVICE OF SOME SORT?

8 A. YEAH. THERE ARE SOLID STATE DRIVES THAT ARE --  
9 FOR WHICH THOSE ARE LOADED ON, AND THEY ARE PUT INTO THE  
10 MACHINE.

11 Q. HOW DO YOU KNOW WHAT IS ON A SOFTWARE DRIVE IS  
12 KOSHER?

13 A. WE HAVE AN ABILITY TO PULL THE CONTENTS OFF OF  
14 THOSE CARDS AND DO WHAT IS CALLED A HASH CHECK. SO IT  
15 IS BASICALLY, PUT EVERY BIT -- EVERY BIT OF DATA THAT IS  
16 ON THAT THROUGH A MATHEMATICAL THING THAT KICKS OUT A  
17 NUMBER THAT IS UNIQUE.

18 AND SO WE KNOW -- EAC REQUIRES A  
19 PROCEDURE WHERE THEY DO WHAT'S CALLED A TRUSTED BUILD.  
20 AND SO WE DON'T BUILD THE SOFTWARE. WE DON'T GENERATE  
21 IT AND INSTALL IT ON THE MACHINE. WE GIVE THEM ALL THE  
22 DIFFERENT SOFTWARE COMPONENTS THAT ARE USED TO BUILD THE  
23 SOFTWARE.

24 Q. GIVE WHO?

25 A. THE EAC.

1 Q. OKAY.

2 A. I'M SORRY. WE GIVE THEIR TEST LABS. WE GIVE IT  
3 TO THEM AND THEY BUILD IT, AND WHEN THEY ARE DONE DOING  
4 THE BUILD ACCORDING TO OUR PROCEDURES, SO WE DON'T GET  
5 TO TOUCH IT. WE USE AN EAC CERTIFIED OR VS -- NIST  
6 CERTIFIED LAB. SO THEY BUILD THE SOFTWARE, THEY HASH  
7 IT, AND THEY SAY, WE KNOW THIS SOFTWARE IS THE RIGHT  
8 STUFF. AND WHEN YOU HASH SOFTWARE THAT IS OUT IN THE  
9 WILD, YOU SHOULD GET THIS NUMBER AND ONLY THIS NUMBER.  
10 SO THERE IS -- EVERY SYSTEM ON THE MARKET HAS THAT HASH  
11 VALIDATION PROCESS. OURS DOES AS WELL, SO YOU CAN PULL  
12 THE INFORMATION OFF OF THE MACHINE, YOU CAN HASH IT, AND  
13 IF ONE TINIEST LITTLE BIT OF THAT -- OF OUR SOFTWARE  
14 CHANGES OR THE OPERATING SYSTEM, IT'S DETECTABLE.

15 Q. AND SO THAT HOW WOULD SOMEBODY INSTALL MALWARE  
16 WHILE THE MACHINE WAS STILL ON YOUR CAMPUS? HOW WOULD  
17 SOMEONE INSTALL MALWARE? IT WOULD SOMEHOW HAVE TO FIRST  
18 GET ACCESS TO THE EAB APPROVED?

19 A. WELL, THEY WOULD HAVE TO -- THEY WOULD HAVE TO  
20 BREAK INTO OUR FACILITY.

21 Q. YES.

22 A. AND THEY WOULD HAVE TO BREAK INTO THE MACHINES.

23 Q. YES.

24 A. AND THEY WOULD HAVE TO REPLACE THE DATA DRIVE  
25 THAT HAS THE OPERATING SYSTEM. IT WOULD BE LIKE

1 REPLACING A HARD DRIVE ON A COMPUTER. AND THERE ARE  
2 PLACES WHERE STATES TAKE IT EVEN FURTHER, WHERE WE  
3 CERTIFY IT WITH A STATE AND THE STATE TAKES THAT TRUSTED  
4 COPY AND THE ONLY WAY TO UPGRADE TO THAT TRUSTED COPY IS  
5 TO GET IT FROM THEM, AND SO IF THEY DON'T TRUST US TO  
6 BE --

7 Q. YOU WERE TALKING ABOUT HOW PHYSICALLY IT WOULD  
8 BE INSTALLED. I MEAN, I THOUGHT WHAT YOU SAID, AND I  
9 APOLOGIZE, I AM NOT GETTING IT, BUT I THOUGHT WHAT YOU  
10 SAID WAS THE EAB BLESSES -- PUTS TOGETHER ALL OF THE  
11 SOFTWARE COMPONENTS, PUTS A NUMBER ON IT, AND SAYS  
12 EVERYTHING HAS TO HAVE THIS NUMBER.

13 A. IT'S -- ALL OF THE FILES THAT MAKE UP THE  
14 COMPUTER SOFTWARE ARE -- AGAIN, THERE'S A PROGRAM THAT  
15 YOU DUMP THOSE FILES INTO THE PROGRAM. IT DOES A  
16 MATHEMATICAL CALCULATION AND SAY A UNIQUE NUMBER FOR  
17 THESE EXACT COMPILATION OF FILES IS THIS. AND SO YOU  
18 CAN -- IT'S CALLED A HASH VALIDATION.

19 Q. WHEN YOU INSTALL -- YOU INSTALL THAT INTO THE  
20 MACHINE WHEN YOU MAKE A NEW MACHINE.

21 A. WE CAN, YES.

22 Q. WHO DOES OTHERWISE, IF YOU DON'T?

23 A. THE -- GENERALLY --

24 Q. DO YOU HAVE A CUSTOMER DO IT?

25 A. A CUSTOMER COULD DO IT IF THEY WERE TRAINED.

1 Q. DO YOU KNOW IF THE CITY OF PHILADELPHIA DOES IT  
2 OR DO YOU DO IT FOR THE CITY OF PHILADELPHIA?

3 A. AS THE MACHINES ARE NECESSARILY -- IF THEY NEED  
4 TO BE UPDATED, WE DO IT FOR THEM IN GENERAL, I BELIEVE.

5 Q. AND SO WHEN YOU PUT THAT IN, IT'S BACK IN OMAHA  
6 THAT YOU PUT IT IN OR DO YOU BRING THE MACHINES HERE AND  
7 THEN PUT IT IN?

8 A. WE CAN DO IT AT A CUSTOMER SITE.

9 Q. OKAY. AND SO THAT IF MALWARE WERE TO BE INPUT,  
10 IT WOULD HAVE TO BE INPUT INTO THE -- EITHER INTO THE  
11 HARD DRIVE, IF YOU WILL, THAT YOU PUT IN AT THE CUSTOMER  
12 SITE, IT WOULD HAVE TO HAVE ALREADY BEEN ON THERE?

13 A. RIGHT.

14 Q. OR SOMEONE WOULD HAVE TO TAKE OUT THE HARD  
15 DRIVE, ONCE THE MACHINE IS HERE IN PHILADELPHIA, AND DO  
16 WHAT, INPUT SOMETHING ELSE?

17 A. YES. THEY WOULD HAVE TO PUT A REPLACEMENT  
18 COMPROMISED HARD DRIVE IN IT.

19 Q. AND THE HARD DRIVE WOULD HAVE TO HAVE ON IT ALL  
20 OF THE BELLS AND WHISTLES THAT WOULD PASS THE ENCRYPTION  
21 SCREEN THAT YOU DESCRIBED EARLIER.

22 A. IT WOULD HAVE TO HAVE SOFTWARE THAT IS ABLE TO  
23 HANDLE THE DATA COMING IN AND THE DATA GOING OUT.

24 Q. IS THIS A RATIONAL SCENARIO? CAN THIS ACTUALLY  
25 HAPPEN, AS A PRACTICAL MATTER?

1 A. IT WOULD BE DIFFICULT.

2 Q. HOW?

3 A. AND PART OF IT IS BECAUSE OF THE CONTROLS.

4 THERE IS ALSO WAYS OF AUDITING THE SYSTEM TO MAKE SURE

5 THAT WHAT WAS ON THERE YESTERDAY IS ON THERE TODAY.

6 BUT, YEAH, IT WOULD BE CHALLENGING. YOU HAVE TO GET A

7 VERSION OF OUR SOFTWARE, YOU HAVE TO FIGURE OUT HOW IT

8 WORKS, YOU HAVE TO THEN CHANGE IT APPROPRIATELY, AND

9 THEN THERE ARE SOME ADDITIONAL LIMITATIONS AS FAR AS THE

10 -- HOW OUR SOFTWARE COMMUNICATES WITH THE PAPER PATH AND

11 THINGS LIKE THAT THAT WOULD BE REALLY HARD.

12 Q. YOUR SOFTWARE IS PROPRIETARY.

13 A. IT IS.

14 Q. AND I CAN'T GO ON TO GOOGLE AND ASK TO GET YOUR

15 SOFTWARE.

16 A. YOU CANNOT.

17 Q. AND PRESUMABLY -- DO YOU SELL THE SOFTWARE TO

18 THE CUSTOMER OR DO YOU LEASE THE SOFTWARE TO THE

19 CUSTOMER?

20 A. THE SOFTWARE -- THERE IS A LICENSE AGREEMENT.

21 Q. OKAY.

22 A. THE CUSTOMER DOES NOT HAVE THE RIGHTS TO THE

23 SOFTWARE. THEY HAVE THE RIGHTS TO USE IT.

24 Q. SO FOR SOMEBODY TO DO WHAT DR. HALDERMAN SAYS IS

25 THEORETICALLY POSSIBLE, HE OR SHE WOULD FIRST HAVE TO



1 GET HOLD OF YOUR SOFTWARE TO UNDERSTAND HOW TO CORRUPT  
2 IT.

3 A. YES.

4 Q. AND -- WHICH MEANS, AS HE SAID, IT WOULD EITHER  
5 BE IN OMAHA OR IN PHILADELPHIA.

6 A. RIGHT.

7 Q. I ASSUME THERE ARE PHYSICAL SECURITY PROTECTIONS  
8 IN OMAHA?

9 A. YEAH, THEY ARE GETTING ANNOYING. THEY ARE  
10 GETTING --

11 Q. HAVE YOU HAD A BREAK-IN?

12 A. WE HAVE NOT. WE -- IT'S GETTING CRAZIER.  
13 THERE'S PEOPLE WHO TRY TO GET INTO OUR BUILDINGS.  
14 THERE'S PEOPLE WHO COME TO OUR BUILDING -- THE PRESIDENT  
15 OF OUR COMPANY WAS ACCOSTED NOT TOO LONG AGO BY SOMEONE  
16 WHO WAS MAD ABOUT AN ELECTION AND THEY THREW A ROCK  
17 THROUGH OUR WINDOW. SO WE ARE BECOMING MORE KNOWN AND  
18 MORE OF A TARGET SO OUR SECURITY IS GETTING MORE  
19 AGGRESSIVE BY THE DAY.

20 Q. YOU TALKED ABOUT TAKING THE HARD DRIVE OUT OF  
21 THE MACHINE. WE DIDN'T SEE THE HARD DRIVE WHEN YOU --  
22 IT'S NOT IMMEDIATELY -- YOU SHOULD EXCUSE THE EXPRESSION  
23 -- VISUALLY ACCESSIBLE WHEN YOU OPEN THE BACK THERE?

24 A. IT IS UNDER A SEALED COMPARTMENT IN THE MACHINE.

25 Q. SO SOMEBODY WOULD HAVE TO BREAK SEVERAL SEALS,

1 USE A CLONE OF THE BARREL KEY TO OPEN UP THE BACK, BREAK  
2 ANOTHER SEAL, AND THEN DO WHAT TO TAKE THE HARD DRIVE  
3 OUT?

4 A. IT'S WHAT'S CALLED A CFAST CARD. IT'S A SMALL  
5 MEMORY CARD AND SO IT IS A SOLID STATE DRIVE. SO THEY  
6 WOULD HAVE TO -- IF THEY CAN GET INTO THE MACHINE, THEY  
7 CAN REMOVE IT.

8 Q. AND PULL IT OUT?

9 A. YES.

10 Q. AND THEY EITHER HAVE TO PUT IN A DIFFERENT CARD  
11 OR TINKER WITH THE CARD THAT THEY PULL OUT.

12 A. CORRECT.

13 Q. AND SO WHOEVER WOULD DO THAT WOULD HAVE TO  
14 UNDERSTAND -- WOULD HAVE TO ACTUALLY BE A HANDS-ON.  
15 THIS COULD NOT BE DONE FROM SAY A FOREIGN COUNTRY. THIS  
16 WOULD HAVE TO BE DONE PHYSICALLY, BREAK INTO THE  
17 MACHINE, PULL THE CARD OUT, AND EITHER TAMPER WITH THE  
18 CARD OR PUT A SUBSTITUTE CARD IN.

19 A. CORRECT. AND THAT MACHINE IS NEVER CONNECTED TO  
20 ANYTHING AND WHAT IS BROUGHT INTO IT IS ONLY DATA. IT  
21 IS NOT ACTUAL PROGRAMS. AND THERE ARE SECURITY  
22 PROTECTIONS AROUND INTRODUCING MALWARE VIA A USB STICK  
23 SO --

24 Q. IF YOU WANTED -- IF WE -- IF WE SEALED  
25 EVERYTHING, AND YOU WANTED TO GET ACCESS TO THE HARD

1 DRIVE, REPLACE THE STICK -- I'M SORRY, THE CARD. LET'S  
2 SAY YOU ARE NOT GOING TO REPROGRAM IT, BECAUSE I ASSUME  
3 THAT REPROGRAMMING A CARD WHEN YOU ARE IN A PHILADELPHIA  
4 WAREHOUSE MIGHT BE CHALLENGING. SO YOU JUST REPLACE IT  
5 WITH ANOTHER CARD THAT PRESUMABLY YOU HAVE MODELED ON  
6 THE CARD YOU HAVE NOT STOLEN YET, BUT LET'S PUT THAT  
7 ASIDE. AND THEN YOU HAVE TO RESEAL EVERYTHING SO THAT  
8 IT LOOKS LIKE IT HAS NOT BEEN MONKEYED WITH.

9 A. YES. YOU HAVE TO RESEAL THE -- YOU HAVE TO  
10 RESEAL IT WITH SEALS WITH THE IDENTICAL INFORMATION.

11 Q. AND LET'S ASSUME THAT COULD BE DONE.

12 A. YES.

13 Q. HOW LONG WOULD YOU ESTIMATE THAT COULD TAKE FOR  
14 A SINGLE MACHINE?

15 A. IF YOU HAD EVERYTHING READY TO GO?

16 Q. YES.

17 A. PROBABLY 5 OR 10 MINUTES.

18 Q. OKAY. SO THE MACHINE WOULD HAVE TO BE ALONE?

19 A. YES.

20 Q. AND FOR 5 OR 10 MINUTES YOU COULD ACCESS THE  
21 MACHINE, PULL THE GUTS OUT, REPLACE IT, RESEAL THE  
22 MACHINE AND LEAVE.

23 A. RIGHT. AND THOSE ARE SIMILAR TO THE -- YOU  
24 KNOW, THE PROTECTIONS THAT ARE NECESSARY ON ANY VOTING  
25 MACHINE THAT HAS TO GO OUT IN THE WILD, A PRECINCT

1 SCANNER, ANY TYPE OF BMD. SO WITH -- IF YOU CAN  
2 COUNTERFEIT THE SEALS, IF YOU CAN DO ALL THOSE KIND OF  
3 THINGS, YOU HAVE THE OPPORTUNITY TO MESS WITH THINGS.

4 Q. AND IF, IN FACT, THE INTRUDER DOES NOT HAVE A  
5 REPLACEMENT CARD BUT WANTS TO SOMEHOW RECONFIGURE,  
6 REPROGRAM THE CARD, HOW LONG WOULD THAT TAKE?

7 A. YOU WOULD HAVE TO BASICALLY WIPE THE CARD AND  
8 LOAD SOMETHING NEW ON, AGAIN PROBABLY 10, 15 MINUTES.

9 Q. SO DEPENDING ON HOW WELL EQUIPPED THE INTRUDER  
10 IS, IT COULD TAKE BETWEEN 5 AND 25 MINUTES.

11 A. YES.

12 Q. OKAY. FOR ONE MACHINE.

13 A. YES.

14 THE COURT: YES. MR. WIYGUL.

15 BY MR. WIYGUL:

16 Q. TO ADDRESS THE SPECIFIC VULNERABILITY THAT DR.  
17 HALDERMAN DESCRIBED AND WE WERE TALKING ABOUT EARLIER,  
18 IF I REFER TO IT AS THE BARCODE MISMATCH ISSUE, DO YOU  
19 KNOW WHAT I AM REFERRING TO?

20 A. YES.

21 Q. LET'S ASSUME FOR THE MOMENT THAT SOMEONE VERY  
22 ENTERPRISING AND WELL EQUIPPED DID MANAGE TO CIRCUMVENT  
23 ALL OF THE SECURITY PROCEDURES THAT YOU JUST DESCRIBED  
24 AND THEY WERE ABLE TO SOMEHOW REPROGRAM THE MACHINE WITH  
25 MALWARE TO HAVE IT SPIT OUT PAPER RECORDS WITH BARCODES

1 THAT DIDN'T MATCH THE TEXT, WOULD THAT BE DETECTABLE?

2 A. TO CREATE A MISMATCH BETWEEN THE BARCODES AND  
3 THE TEXT?

4 Q. IF WE ASSUME THAT THE MACHINE HAS BEEN  
5 CORRUPTED. NOW, WE ARE ASSUMING THAT.

6 A. YES.

7 Q. TO PRINT OUT PAPER RECORDS WITH BARCODE  
8 INFORMATION THAT IS DIFFERENT, DOES NOT CORRESPOND TO  
9 THE VOTER-VERIFIABLE TEXT. THAT WAS DR. HALDERMAN'S  
10 SCENARIO, RIGHT?

11 A. YES.

12 Q. ASSUMING THAT HAS HAPPENED, WOULD THAT BE  
13 DETECTABLE?

14 A. YEAH, BECAUSE THE -- I MEAN, YOU WOULD SCAN THE  
15 -- YOU COULD SIMPLY SCAN THE CARDS OR THE SUMMARY CARDS  
16 WITH A KNOWN TRUSTED PAPER BALLOT SCANNER. SO IF YOU  
17 HAVE ONE THAT YOU'VE -- YOU HAVE A HIGH SPEED SCANNER  
18 THAT YOU HAVE LOCKED IN YOUR ROOM AND SO ONE WAY IS JUST  
19 TO SIMPLY RESCAN THOSE ON A TRUSTED SCANNER THAT WILL  
20 GIVE YOU ONE RESULT, YOU WILL LOOK AT THE PAPER, AND YOU  
21 WILL SEE A DIFFERENT TEXT. SO THAT'S ONE WAY OF DOING  
22 IT.

23 Q. IS THAT THE SORT OF PROCEDURE THAT IS UNDERTAKEN  
24 IN AN AUDIT?

25 A. IT CAN, YES. SO YOU WOULD -- IF YOU DON'T TRUST

1 THE XL, YOU BRING THEM AND YOU PUT THE CARDS ONTO A  
2 MACHINE THAT -- AND YOU COULD LOAD THAT MACHINE FROM A  
3 PRISTINE CONDITION WITH THE TRUSTED -- ITS TRUSTED  
4 SOFTWARE AND SCAN, AND IT WOULD GIVE YOU THE PROPER  
5 RESULTS FOR WHAT IS TRULY ENCODED IN THE BARCODE. AND  
6 SO THAT IS FAIRLY COMMON, TO RESCAN IT ON A TRUSTED  
7 MACHINE. ANOTHER WAY YOU COULD DO IT IS YOU COULD  
8 INDIVIDUALLY SCAN THOSE BARCODES -- AND WE HAVE THE  
9 ABILITY TO LOOK AT THAT NUMBER, AND FOR THAT PARTICULAR  
10 BALLOT STYLE FOR THAT PARTICULAR BARCODE, THE ALLOWED  
11 NUMBERS ARE THIS. AND WE CAN TIE THAT TO A -- TIE THAT  
12 TO A CANDIDATE. I THINK FOR PHILADELPHIA WE GENERATE  
13 SOMETHING CALLED A CODE BOOK. SO IT'S THE ABILITY TO  
14 PRINT OUT OR TO DUMP OUT A SPREADSHEET OUT OF THE SYSTEM  
15 THAT SAYS FOR THIS BALLOT AND THIS STYLE AND THIS RACE,  
16 THIS BARCODE NUMBER IS THIS CANDIDATE. SO YOU COULD DO  
17 THAT AS WELL.

18 Q. THE COURT HAS HEARD TESTIMONY THAT THE  
19 EXPRESSVOTE MACHINES ARE NOT THE ONLY VOTING SYSTEMS  
20 THAT USE BARCODES OR SOME OTHER SORT OF HUMAN  
21 INSCRUTABLE CODING TO TABULATE THE VOTE. DID YOU HEAR  
22 THAT TESTIMONY?

23 A. YES.

24 Q. DO YOU AGREE WITH THAT?

25 A. I THINK SECRETARY OF STATE BOOCKVAR HIT IT

1       PRETTY MUCH ON THE MONEY, PRETTY MUCH ALL OF THEM USE  
2       SOME FORM OR FASHION OF A BARCODE.   AND EVEN -- ONE DAY  
3       I WAS LOOKING AT -- AND WE SHOWED IT HERE IN THE EARLIER  
4       TESTIMONY -- THE CARD USED BY UNISYN, AND THERE IS KIND  
5       OF A SERIES OF DOTS AND BARCODES AND THINGS ON THAT, AND  
6       IT OCCURRED TO ME AT ONE POINT THAT THAT LITTLE BARCODE  
7       THING IS ESSENTIALLY WHAT A BALLOT LOOKS LIKE TO A  
8       PRECINCT SCANNER, SO AN OVAL-FILLED BALLOT.

9       Q.           INCLUDING A HAND-MARKED PAPER BALLOT.

10      A.           THAT'S WHAT A HAND-MARKED PAPER BALLOT LOOKS  
11      LIKE TO A SCANNER.   IT IS A SERIES OF SQUARES AND DOTS  
12      WITH NO TEXT.   IT DOES NOT LOOK AT THE TEXT AT ALL.   IT  
13      DOES NOT LOOK AT THE FACT THAT THE OVAL IS NEXT TO THE  
14      CORRECT TEXT.   SO IF I AM FILLING IN THE OVAL NEXT TO  
15      TRUMP, IT DOES NOT MATTER.   THE MACHINE DOES NOT LOOK TO  
16      SEE THAT THAT OVAL IS NEXT TO TRUMP.

17      Q.           SO IS THE SORT OF MISMATCH THAT DR. HALDERMAN  
18      DESCRIBED BETWEEN THE CODING THAT THE MACHINE READS TO  
19      TABULATE THE VOTE AND THE HUMAN READABLE TEXT, IS THAT  
20      SORT OF MISMATCH ALSO POSSIBLE IN A HAND-MARKED PAPER  
21      BALLOT SYSTEM?

22      A.           IT IS.   IN A NUMBER OF DIFFERENT USE SCENARIOS,  
23      YES.

24      Q.           ARE THERE WAYS THAT HAND-MARKED PAPER BALLOTS  
25      ARE MORE SUSCEPTIBLE TO MISMATCHES OR DIFFERENT SORTS OF

1 MISMATCHES THAN IS THE CASE WITH A BALLOT-MARKING DEVICE  
2 SUCH AS THE EXPRESSVOTE XL?

3 A. YEAH. YOU KNOW, ONE WE HAVE SEEN BEFORE WHERE  
4 THEY -- YOU KNOW, A CUSTOMER WILL SAY THIS IS WHAT WE  
5 WANT OUR BALLOT TO LOOK LIKE, AND THEY GIVE US THE  
6 BALLOT LAYOUT. AND THEN WE HAVE TO CODE THE CODING TO  
7 MATCH THAT BALLOT, INSTEAD OF WHAT WE RECOMMEND. AND  
8 THAT IS, YOU CODE EVERYTHING THROUGH THE SOFTWARE, AND  
9 IT PRINTS THE BALLOT PROPERLY. SO I HAVE SEEN IT WHERE  
10 THEY PRINT THE BALLOTS, THEY LAY THEM OUT ON A MAC AND  
11 THEY PRINT THE BALLOTS, AND THEN THEY CODE IT IN THE  
12 SOFTWARE, AND THEY MAKE A MISTAKE. SO TWO POSITIONS ARE  
13 FLIPPED OR THE PROGRAMMING IS LOOKING FOR THE OVAL IN  
14 THIS LOCATION AND THE OVAL IS ACTUALLY NOT THERE. THERE  
15 IS TEXT THERE. THERE IS AN OVAL DOWN. A NUMBER OF  
16 THOSE DIFFERENT SCENARIOS HAPPEN ALL THE TIME.

17 AND IF YOU START INCLUDING, YOU KNOW, BAD  
18 ACTORS, YOU KNOW, THERE IS PLACES -- THAT BOD PRINT,  
19 BALLOT ON DEMAND. SO YOU WALK UP AND IT'S GOING TO BE  
20 MORE COMMON IN VOTE CENTERS WHERE A PLACE LIKE PHILLY  
21 THAT HAS THOUSANDS OF BALLOT STYLES, DIFFERENT PRECINCT  
22 PARTY COMBINATIONS. IF THEY WANT EVERYBODY TO VOTE IN  
23 ONE SPOT, THEY HAVE TO HAVE EVERY POSSIBLE BALLOT IN  
24 THAT SPOT. YOU CAN'T PRINT -- YOU CAN'T FIGURE OUT HOW  
25 MANY TO PRINT OF EACH KIND AND THEN HAVE THEM FOR YOU.



1       YOU CAN PULL -- SO YOU JUST PRINT THEM ON DEMAND. WELL,  
2       A HACKED BOD SYSTEM COULD FLIP THE OVALS JUST FOR FIVE  
3       OF THE BALLOTS, TEN OF THE BALLOTS. SO THAT -- THERE  
4       ARE A NUMBER OF DIFFERENT WAYS WHERE SIMILAR ATTACKS ARE  
5       POSSIBLE AND HAVE TO BE PROTECTED AGAINST ON HAND-MARKED  
6       PAPER BALLOTS.

7       Q.       AND THOSE PARTICULAR ATTACKS THAT YOU JUST  
8       DESCRIBED WOULD NOT BE POSSIBLE ON THE EXPRESSVOTE XL,  
9       IS THAT RIGHT?

10      A.       IT'S SIGNIFICANTLY MORE DIFFICULT BECAUSE THE  
11      MACHINE -- YOU KNOW, THE MACHINE IS GOING TO, YOU KNOW,  
12      KIND OF TIE TOGETHER THE BARCODE AND THE TEXT. SO  
13      WHEREAS IN THE HAND-MARKED PAPER BALLOT THERE IS PLACES  
14      WHERE THAT PROCESS CAN GET DISCONNECTED. SO YES, THERE  
15      IS PLACES WHERE IT ACTUALLY IS BETTER AND MORE PROTECTED  
16      USING OUR METHOD.

17      Q.       I WANT TO ASK YOU ABOUT ANOTHER THEORETICAL  
18      VULNERABILITY THAT DR. HALDERMAN IDENTIFIED. I WILL  
19      REFER TO IT AS THE PRINthead ISSUE. I THINK --

20                   THE COURT: IF I CAN INTERRUPT YOU WHILE  
21      IT IS STILL IN MY MIND. WHO PUTS THE SEALS ON THE  
22      MACHINES, YOU OR THE CUSTOMER?

23                   THE WITNESS: THE CUSTOMER GENERALLY -- I  
24      MEAN, THEY HAVE THINGS THAT THEY DO WITH THE MACHINE.  
25      THEY HAVE TRAINED TECHNICIANS, SO GENERALLY THEY ARE

1 SEALING THE MACHINES.

2 THE COURT: SO WHEN YOU TRANSPORT THE  
3 MACHINE TO PHILADELPHIA, IS IT SEALED?

4 THE WITNESS: I'M NOT SURE.

5 THE COURT: OKAY.

6 THE WITNESS: BUT I KNOW THEY DO GO  
7 THROUGH SOME VALIDATION WHEN THEY ARRIVE. THERE'S AN  
8 ACCEPTANCE CHECK PROCEDURE THAT IS DONE.

9 THE COURT: THE SEAL, AS FAR AS YOU KNOW,  
10 THEN, IS PUT ON BY THE CITY. THE SEALS THAT YOU TOOK  
11 OFF WHEN YOU BEGAN YOUR DEMONSTRATION --

12 THE WITNESS: YEAH. THOSE ARE THAT ARE  
13 -- THAT ALLOW THE POLL WORKERS THE ACCESS THAT THEY  
14 REQUIRE, THOSE ARE PUT ON AND TAKEN OFF BY THE  
15 CUSTOMERS.

16 THE COURT: AND DO THEY HAVE UNIQUE  
17 IDENTIFYING NUMBERS ON THEM?

18 THE WITNESS: THEY DO.

19 THE COURT: AND I GUESS WE WILL HAVE  
20 ANOTHER WITNESS DESCRIBE HOW THOSE SEALS ARE -- MR.  
21 ARONCHICK -- HOW THOSE SEALS ARE ACTUALLY PUT TOGETHER  
22 AND PUT ON?

23 MR. ARONCHICK: YES, RIGHT.

24 MR. FIELD: WE CAN, YOUR HONOR.

25 THE COURT: ALL RIGHT. FINE. I AM

1 SORRY.

2 THE WITNESS: NO PROBLEM.

3 BY MR. WIYGUL:

4 Q. DR. HALDERMAN ALSO OPINED THAT IT WOULD BE  
5 FEASIBLE FOR MALWARE TO CAUSE THE PRINthead TO ADD  
6 ADDITIONAL RACES OR SELECTIONS TO A PAPER AFTER THE  
7 VOTERS REVIEWED IT. YOU HEARD THAT TESTIMONY?

8 A. YES.

9 Q. TO YOUR KNOWLEDGE, HAS THAT EVER HAPPENED IN THE  
10 ELECTION USING THE EXPRESSVOTE XL?

11 A. IT HAS NOT.

12 Q. HAS IT EVER HAPPENED IN THE TEST OF THE XL?

13 A. NO.

14 Q. HAS THE XL BEEN TESTED FOR THAT ISSUE?

15 A. IT HAS.

16 Q. AND I THINK YOU HAVE ALREADY GIVEN PART OF THE  
17 ANSWER TO THIS QUESTION. AS WE GO ALONG THE WAY, IT  
18 MIGHT BE USEFUL, IF YOU CAN SUMMARIZE EVERY BULLET POINT  
19 THAT IS RESPONSIVE TO THIS. IS THE XL MACHINE DESIGNED  
20 WITH FEATURES THAT ARE SUPPOSED TO PREVENT THAT KIND OF  
21 ISSUE FROM HAPPENING?

22 A. YES. SO THE BARCODES THEMSELVES, THE TYPE OF  
23 BARCODE WE USE IS EXCEPTIONALLY DIFFICULT TO MODIFY AND  
24 IN SOME CASES IT IS NOT POSSIBLE TO MODIFY BECAUSE IT --  
25 IF YOU HAVE A -- WE USE A UPC, I GUESS, 128 C. IT'S THE

1       BARCODE THAT IS USED IN MOST GROCERY STORES. SO IF YOU  
2       HAVE A SIX DIGIT NUMBER THAT YOU WANT TO PUT IN THAT  
3       BARCODE, IT ENCODES THAT INTO THE BARS AND SPACES, BUT  
4       IT ALSO CALCULATES A CHECK DIGIT SO THAT THAT DIGIT --  
5       AND IT ADDS THAT TO IT. SO IF YOU CHANGE THE VALUE IN  
6       THE BARCODE, YOU HAVE TO ALSO CHANGE THE TEXT DIGIT  
7       WHICH, GIVEN THE SPACES AND THE BARS AND THINGS, IS  
8       VIRTUALLY IMPOSSIBLE. SO THOSE BARCODES HAVE A LITTLE  
9       BIT OF PROTECTION IN THEM.

10                   THERE IS ALSO, YOU KNOW, JUST THE -- WHAT  
11       HAS BEEN DISCUSSED BEFORE, AND THAT IS THE  
12       VOTER-VERIFIABLE PORTION OF IT WHERE IT HAS -- IT CAN BE  
13       PROGRAMMED TO HAVE A SPACE BETWEEN EACH CONTEST OR NO  
14       SPACES BETWEEN EACH CONTEST, SO IT'S MORE OBVIOUS TO  
15       SOMEONE VALIDATING -- VERIFYING THEIR PRINTED CONTENT ON  
16       THEIR CARD THAT SOMETHING IS MISSING OR HAS BEEN LEFT  
17       OFF. WE ALSO KIND OF BORDER THAT AREA SO YOU CAN'T ADD  
18       SOMETHING TO THE BOTTOM. WE PRINT SELECTIONS FOR EVERY  
19       POSSIBLE VOTE FOR, SO LIKE WE SAW BEFORE IT'S A VOTE FOR  
20       TWO AND YOU VOTE FOR ONE AND LEAVE ONE BLANK, IT PRINTS  
21       THE CANDIDATE AND THEN NO SELECTION. AND SO THERE IS --  
22       AND THEN, YOU KNOW, JUST PRACTICAL THINGS LIKE, YOU  
23       KNOW, PRINTING AFTER THE FACT REQUIRES YOU TO PRINT IN  
24       THE OPPOSITE ORDER TO MAKE SURE THAT THE CARD EXACTLY  
25       ALIGNS THROUGH THE PRINTER TO WHERE IT DOES NOT PRINT

1 OFF IN ANY MANNER, OR MISS.

2 Q. CAN I STOP YOU THERE. BECAUSE I AM NOT SURE I  
3 UNDERSTOOD ALL OF WHAT YOU SAID ABOUT PRINTING AFTER THE  
4 FACT IN THE OPPOSITE MANNER. CAN YOU JUST WALK US  
5 THROUGH --

6 A. ONE OF THE HALDERMAN -- OR I GUESS IT WAS THE  
7 ANDREW APPEL'S CLAIM WHERE AFTER THEY VERIFIED IT, IT  
8 COULD PRINT ON THE WAY BACK OUT. YOU HAVE TO MAKE SURE  
9 THE ALIGNMENT OF THE CARD AND THE POSITION OF PRINTING.  
10 SO AS IT'S GOING BY, YOU NEED TO ADD THAT LINE RIGHT AT  
11 THAT EXACT SPOT, AND IF IT'S OFF IN ALIGNMENT, YOU CAN  
12 SEE IT, AND IT'S DIFFICULT TO GET THE CARD TO GO THROUGH  
13 THE PRINTER EXACTLY IN THE SAME WAY. AND WHEN YOU ARE  
14 PRINTING IT AND POSITIONING IT FOR VOTER VERIFICATION,  
15 IT'S ACTUALLY PRINTING FROM BOTTOM TO TOP. WHEN YOU  
16 PUSH IT BACK THROUGH, IT WOULD HAVE TO PRINT FROM TOP TO  
17 BOTTOM.

18 SO JUST TAKING OUR SOFTWARE AND TWEAKING  
19 IT, NO, YOU WOULD HAVE TO REENGINEER IT, AND THEN WE  
20 DON'T -- THE COMBINATION OF WHAT OUR SOFTWARE DOES AND  
21 WHAT THE PRINTER SOFTWARE DOES, WE DON'T SAY MOVE IT TO  
22 THIS POSITION, THEN PRINT THIS LINE, THEN MOVE IT, THEN  
23 PRINT THIS LINE AND MOVE IT. WE JUST SAY, HERE IS AN  
24 IMAGE, PRINT IT, AND THE PRINTER TAKES IT FROM THERE.  
25 SO YOU WOULD HAVE TO COMPROMISE BOTH, AND IT IS -- IT

1        WOULD BE DIFFICULT.

2        Q.        I THINK YOU ALLUDED TO THIS EARLIER, BUT IS THE  
3        SPEED AT WHICH THE PAPER IS MOVED DIFFERENT AS TO WHEN  
4        THE PAPER IS COMING INTO THE WINDOW AND BEING PRINTED AS  
5        DESIGNED VERSUS WHEN IT LEAVES THE WINDOW AND IS BEING  
6        PULLED BACK TOWARD THE OTHER DIRECTION?

7        A.        YEAH.    THE OPERATION OF THE PRINTER IS, ANY TIME  
8        IT'S MOVING THE PAPER AND NOT PRINTING, BOTH THE  
9        PRINthead IS LIFTED AND THE PAPER MOVES AT A HIGHER  
10      SPEED.

11      Q.        HOW MUCH FASTER ROUGHLY DOES IT MOVE WHEN IT'S  
12      NOT BEING PRINTED?

13      A.        I THINK IT'S -- I DON'T KNOW IF IT'S LIKE  
14      SOMEWHERE BETWEEN 25 AND 50 PERCENT.    I WOULD HAVE TO  
15      LOOK THAT UP.

16      Q.        IF SOMEHOW THE PRINTER WAS -- WELL, FIRST OF  
17      ALL, AS A THRESHOLD MATTER, IN ORDER FOR THE SCENARIO  
18      THAT DR. HALDERMAN DESCRIBED COME TO PASS, THE MACHINE  
19      WOULD HAVE TO BE COMPROMISED IN TERMS OF MALWARE,  
20      CORRECT?

21      A.        CORRECT.

22      Q.        YOU DESCRIBED BEFORE A NUMBER OF DIFFERENT  
23      FEATURES DESIGNED TO PREVENT THAT FROM HAPPENING,  
24      CORRECT?

25      A.        YES.

1 Q. ALL OF THOSE FEATURES APPLY WITH EQUAL FORCE TO  
2 DR. HALDERMAN'S PRINthead SCENARIO?

3 A. IT DOES, YEAH, AND MAYBE MORE SO BECAUSE THEY  
4 HAVE TO COMPROMISE THE PAPER PATH AS WELL.

5 Q. IF SOMEHOW ALL OF THOSE FEATURES WERE  
6 CIRCUMVENTED, THE PRINTER WAS PRINTING ON THE PAPER  
7 AFTER THE VOTER HAD VERIFIED IT, WOULD YOU EXPECT THAT  
8 TO BE DETECTABLE?

9 A. YEAH. I GUESS IT'S -- I WOULD EXPECT IT -- I  
10 THINK IT WOULD BE MORE DETECTABLE THAN SAY IF I BROKE  
11 THE CHAIN OF CUSTODY OF OVAL MARKED BALLOTS AND MARKED  
12 THEM AFTER THEY HAD BEEN SCANNED. IT'S NOT REALLY GOING  
13 TO CHANGE WHAT IS COUNTED. IT'S JUST GOING TO THROW THE  
14 AUDIT INTO QUESTION. SO, YOU KNOW, I CAN DO THAT SAME  
15 HACK WITH AN OVAL FILED BALLOT WITH A PEN OR PENCIL. I  
16 CAN MAKE THE TWO NOT MATCH.

17 Q. I BELIEVE YOU MADE SOME REFERENCE IN YOUR  
18 DEMONSTRATION TO SOUNDS OF THE MACHINE AND DIFFERENT  
19 SOUNDS THE MACHINES MAKE?

20 A. RIGHT.

21 Q. DOES THAT HAVE ANY BEARING ON WHETHER OR NOT THE  
22 KIND OF HACK THAT DR. HALDERMAN DESCRIBED WOULD BE  
23 DETECTABLE?

24 A. YEAH, I THINK SO, BECAUSE MOST PEOPLE WILL SAY  
25 -- WELL, POLL WORKERS DON'T REALLY PAY ATTENTION THAT

1 CLOSELY. THEY ARE NOT REALLY LISTENING TO THE MACHINES.  
2 BUT IF A MACHINE IS -- I HAVE SEEN IT MANY TIMES IN A  
3 POLL SITE WHERE IF A MACHINE IS MAKING A DIFFERENT SOUND  
4 OR IF IT'S ACTING WEIRD, THEY CALL UP AND GO, YOU KNOW,  
5 THAT MACHINE, IT DOESN'T SOUND LIKE THAT ONE. THIS  
6 MACHINE, IT WORKS THE SAME WAY EVERY TIME, BUT THAT ONE  
7 EVERY ONCE IN A WHILE IT WILL MAKE THIS SOUND. IS THAT  
8 -- SHOULD THAT BE LIKE THAT?

9 THE COURT: PRESUMABLY YOU ARE TALKING  
10 ABOUT THE PRINTING SOUND. IT MAKES NO PRINTING SOUND.  
11 WHEN IT TAKES THE BALLOT AND PUTS IT IN THE BIN, THERE  
12 IS NO PRINTING SOUND.

13 THE WITNESS: RIGHT. IT'S JUST THE  
14 STEPPER MOTORS MOVING THE PAPER, AS OPPOSED TO THE  
15 THERMAL PRINTER FIRING.

16 THE COURT: WHICH IS QUITE A BIT LOUDER.

17 THE WITNESS: YES.

18 BY MR. WIYGUL:

19 Q. LET ME ASK YOU ABOUT THE THIRD AND I THINK FINAL  
20 THEORETICAL VULNERABILITY THAT DR. HALDERMAN IDENTIFIED.  
21 I REFER TO IT IN -- MY OWN REFERENCE IS THE PRESCAN  
22 SHARING, AND DR. HALDERMAN OPINES THAT IT WOULD BE  
23 FEASIBLE FOR MALWARE TO CAUSE PAPER RECORDS THAT HAVE  
24 BEEN REJECTED BY VOTERS TO BE TABULATED AS WELL AS THOSE  
25 THAT HAVE BEEN ACCEPTED BY VOTERS. YOU HAVE HEARD THAT



1 TESTIMONY?

2 A. I HAVE, YES.

3 Q. TO YOUR KNOWLEDGE HAS THAT EVER HAPPENED IN ANY  
4 ELECTION USING THE EXPRESSVOTE XL MACHINE?

5 A. NO, I HAVE NO KNOWLEDGE OF THAT EVER HAPPENING  
6 IN AN ELECTION.

7 Q. TO YOUR KNOWLEDGE, HAS IT EVER HAPPENED IN THE  
8 TEST OF THE XL?

9 A. NO.

10 Q. HAS THE XL BEEN TESTED FOR THAT?

11 A. IT HAS.

12 Q. WHAT ARE THE FEATURES IF ANY OF THE XL THAT ARE  
13 DESIGNED TO PREVENT THAT FROM HAPPENING?

14 A. TO PREVENT THE -- AGAIN, TO PREVENT --

15 Q. AS I UNDERSTAND IT, THE SCENARIO THAT DR.  
16 HALDERMAN ENVISIONS IS ONE WHERE -- HE SAYS BECAUSE THE  
17 MACHINE PRINTS AND THEN SCANS THE BARCODE AS THE PAPER  
18 RECORD IS COMING INTO VIEW OF THE VIEWER IN THE WINDOW,  
19 HE SAYS THAT BECAUSE THAT'S THE CASE, IF THE VOTER OPTED  
20 TO SPOIL THEIR BALLOT, THE MACHINE WHICH IS SUPPOSED TO  
21 JUST THEN REJECT THAT INFORMATION, RIGHT?

22 A. YES.

23 Q. THAT INSTEAD, IT COULD CHOOSE TO TABULATE OR BE  
24 CORRUPTED SO THAT IT WOULD TABULATE THAT INFORMATION AND  
25 COUNT THAT VOTE, ELECTRONICALLY AT LEAST, THAT THE VOTER

1 REJECTED ON THE BALLOT.

2 A. RIGHT. SO, YOU KNOW, OUR -- AGAIN, AS I  
3 INDICATED, OUR -- THE SOFTWARE AND THE BEHAVIOR OF THAT  
4 PAPER PATH HAS A COUPLE OF SIMPLE RULES AND IT IS THE  
5 EXACT SAME RULES WE USE ON ANY OF OUR BALLOT SCANNERS.  
6 SO OUR DS200 PRECINCT SCANNER THAT YOU PUT THE OVAL  
7 FILLED BALLOTS IN OR PUT THESE IN, AND THAT IS -- IT'S  
8 -- ANY TIME IT EJECTS IT OUT THE BACK, THE DATA HAS BEEN  
9 CAPTURED. ANY TIME IT KICKS IT OUT THE FRONT, THE DATA  
10 IS FLUSHED.

11 AND SO HIS THEORETICAL PREMISE IS REALLY  
12 SOMETHING THAT IS THE SAME FOR ANY BALLOT SCANNER. SO  
13 IT'S GOING TO PULL A PIECE OF PAPER IN, IT'S GOING TO  
14 SCAN IT AND HAVE THAT STUCK IN THE MEMORY, AND IT'S  
15 GOING TO HAVE THE ABILITY TO EJECT IT BACK TO A VOTER.  
16 AND SO IN GENERAL THOUGH, AS I THINK WAS ANOTHER  
17 TESTIMONY, THERE IS -- THERE ARE CANVASSING TYPE THINGS,  
18 LIKE THE JURISDICTIONS ARE GOING TO UNDERSTAND HOW MANY  
19 CARDS THEY HAVE ISSUED, HOW MANY THEY HAVE SPOILED, HOW  
20 MANY HAVE BEEN ADDED -- HOW MANY HAVE ACTUALLY BEEN  
21 TABULATED. AND IF THOSE DON'T TICK AND TIE, THEY KNOW  
22 THERE IS AN ISSUE.

23 Q. A COUPLE OF FOLLOWUPS THERE. YOU WERE  
24 DESCRIBING THAT THIS SCENARIO, THE THEORETICAL ISSUE  
25 THAT DR. HALDERMAN IDENTIFIED, IS IN NO WAY UNIQUE TO

1 THE XL MACHINE, IS THAT RIGHT?

2 A. IT IS AN ISSUE THAT IS A BALLOT SCANNER ISSUE.

3 Q. YOU MENTIONED I THINK A SCENARIO WHEN YOU WERE  
4 DOWN IN THE WELL OF THE COURT DEMONSTRATING THE MACHINE,  
5 IN WHICH SOMEONE COULD HAND MARK A PAPER BALLOT AND THEY  
6 WOULD OVERVOTE?

7 A. YES.

8 Q. AND THEN THEY WOULD FEED THAT INTO THE OPTICAL  
9 SCANNER AND THE OPTICAL SCANNER WOULD SCAN IT, NOTICE  
10 THAT IT'S AN OVERVOTE AND KICK IT BACK OUT, CORRECT?

11 A. YES.

12 Q. THEN THE VOTER WOULD HAVE A CHOICE WHETHER THEY  
13 WANT TO SAY, TO HECK WITH IT, CAST IT ANYWAY, OR GO BACK  
14 AND DO ANOTHER BALLOT, CORRECT?

15 A. CORRECT.

16 Q. IT WAS YOUR TESTIMONY THAT IN THAT SCENARIO  
17 BECAUSE THE MACHINE HAS SCANNED THAT BALLOT THAT IT TOO  
18 COULD BE HACKED AND IT TOO COULD IN THEORY BE CORRUPTED  
19 IN SUCH A WAY THAT EVEN THOUGH IT KICKED OUT THAT VOTE,  
20 THE BALLOT, AND THE VOTER SAID OH, I AM GOING TO SPOIL  
21 THIS BALLOT AND GO BACK AND DO ANOTHER ONE. THE MACHINE  
22 MIGHT NONETHELESS IN THEORY BE CORRUPTED IN SUCH A WAY  
23 THAT IT WOULD TABULATE THAT VOTE.

24 A. YES. THE PROPOSED VULNERABILITY -- OR THE  
25 VULNERABILITY THAT WAS BROUGHT FORWARD IS SOMETHING THAT

1 IS EQUALLY POSSIBLE ON ANY MACHINE THAT SCANS A BALLOT  
2 AND HAS THE ABILITY TO KICK IT BACK TO THE VOTER BECAUSE  
3 OF AN ISSUE.

4 Q. WHEN YOU SAY IT'S POSSIBLE, YOU MEAN THE THEORY  
5 WOULD APPLY EQUALLY TO DIFFERENT KINDS OF MACHINES?

6 MR. LIEB: OBJECTION TO THE LEADING.

7 THE COURT: ASKED AND ANSWERED.

8 THE WITNESS: YES.

9 BY MR. WIYGUL:

10 Q. SO WHAT IS THE PROTECTION? SINCE THAT IS A  
11 THEORETICAL ISSUE AFFECTING MANY DIFFERENT MACHINES,  
12 WHAT IS THE PROTECTION AGAINST THAT?

13 A. WELL, ON ALL OF THESE MACHINES IT'S THE DIGITAL  
14 SECURITY, THE PHYSICAL CONTROLS, THE PHYSICAL LOCKS AND  
15 SEALS, THE CHAIN OF CUSTODY. ALL OF THOSE TYPE OF  
16 THINGS ARE EQUAL TYPE CONTROLS THAT ARE NECESSARY FOR  
17 MACHINES GOING OUT INTO THE WILD.

18 Q. HAVE YOU EVER SEEN THAT THEORETICAL POSSIBILITY  
19 MANIFEST ITSELF?

20 A. ON PRECINCT SCANNERS -- IN MY EXPERIENCE WITH  
21 PRECINCT SCANNERS AND THESE, I HAVE NOT SEEN IT.

22 Q. THE TERM BALLOT, PAPER BALLOT --

23 A. YES.

24 Q. -- IT'S BEEN IN THE INDUSTRY FOR A WHILE. ARE  
25 YOU FAMILIAR WITH THAT TERM?

1 A. I AM.

2 Q. YOU HAVE HEARD IT USED?

3 A. YES.

4 Q. WHAT DOES IT MEAN TO YOU?

5 A. I DON'T KNOW IF IT'S RELEVANT WHAT IT MEANS TO  
6 ME, BECAUSE IT IS A LEGAL MATTER THAT IS A  
7 JURISDICTIONAL THING. SO AS A VOTING MACHINE VENDOR WE  
8 ARE THE SWISS, SO WE TEND TO USE GENERAL TERMS. SO  
9 SOMETIMES WE ARE UNCOUTH ENOUGH TO REFER TO THE STATE OF  
10 PENNSYLVANIA. IT'S THE COMMONWEALTH OF PENNSYLVANIA. I  
11 GET CORRECTED ALL THE TIME. BUT IT'S A GENERAL TERM  
12 THAT WE USE. A BALLOT IS A BALLOT PAPER RECORD, AND I  
13 AM WITH YOUR HONOR AND THAT'S, DON'T CALL ME LATE FOR  
14 DINNER. IT IS A -- I HAVE NO PROBLEM CALLING THE PIECE  
15 OF PAPER THAT WE USE WITH THE EXPRESSVOTE XL A PAPER  
16 BALLOT BECAUSE IT IS DURABLE RECORD OF THE VOTER  
17 SELECTIONS AND IT IS SOMETHING THAT CAN BE USED FOR A  
18 POST ELECTION AUDIT.

19 Q. YOU SAW THE EVIDENCE THAT DR. APPEL AT PRINCETON  
20 USED THE TERM "PAPER BALLOT" TO DESCRIBE THE EXPRESSVOTE  
21 XL RECORD, IS THAT RIGHT?

22 A. YES. ALL OF THOSE GUYS, THEY ARE THE SAME AS  
23 ME. THEY USE THE TERMS INTERCHANGEABLY AND SO --

24 Q. NOW, THERE HAS ALSO BEEN EVIDENCE, I BELIEVE, OF  
25 SOME EXPRESSVOTE XL PROMOTIONAL LITERATURE BY ES&S THAT

1 DIDN'T USE THE WORD "PAPER BALLOT" TO REFER TO THE PAPER  
2 RECORDS PRODUCED BY THE XL. USED OTHER TERMS, I CAN'T  
3 REMEMBER OFFHAND, VOTE SUMMARY CARD MAYBE OR CAST VOTE  
4 RECORD. ARE YOU FAMILIAR WITH THOSE SORTS OF  
5 PROMOTIONAL MATERIALS?

6 A. YES.

7 Q. WHY DOES ES&S IN THOSE MATERIALS NOT REFER TO  
8 THE PAPER RECORDS OF THE XL AS PAPER BALLOTS?

9 A. IT'S -- AGAIN, IT'S MARKETING ACROSS  
10 JURISDICTIONS IN THE 40-SOME STATES WE DO BUSINESS. SO  
11 YOU'VE GOT A -- YOU KNOW, IN ONE PLACE, IF YOU CALL IT  
12 ONE WAY, YOU WILL GET YELLED AT. IN ANOTHER PLACE YOU  
13 CALL IT THAT SAME THING, THEY'LL SAY THAT'S WHAT WE  
14 WANT. SO WE TEND TO HAVE TO BE VERY GENERIC IN OUR  
15 PUBLICATIONS AND THINGS LIKE THAT, AND JUST TRY TO  
16 OFFEND THE FEWEST PEOPLE POSSIBLE.

17 MR. WIYGUL: ON THAT NOTE, NO FURTHER  
18 QUESTIONS.

19 THE COURT: BEFORE YOU BEGIN I WOULD LIKE  
20 TO TAKE A SHORT BREAK. I HAVE A CRIMINAL TRIAL POSSIBLY  
21 BEGINNING I THINK ON TUESDAY OF NEXT WEEK. WE ARE  
22 OBVIOUSLY GOING TO HAVE TO GO BEYOND TODAY. IS THIS  
23 GOING TO FINISH THIS WEEK, IS MY QUESTION? AND IN  
24 ADDITION, I JUST WANT TO ADVISE YOU THAT WE HAVE A FINAL  
25 PRETRIAL CONFERENCE IN THAT CRIMINAL MATTER AT

1 4 O'CLOCK. I DON'T ANTICIPATE IT WILL TAKE MORE THAN  
2 FIVE OR TEN MINUTES. WE WILL GO CERTAINLY UNTIL THE  
3 WITNESS IS DONE TODAY, AT THE VERY LEAST.

4 YES, MR. ARONCHICK.

5 MR. ARONCHICK: MS. KOTULA WAS AVAILABLE  
6 FOR WHAT WOULD PROBABLY BE COLLECTIVELY ANOTHER  
7 HALF-HOUR OF TESTIMONY THIS AFTERNOON BY TELEPHONE. AND  
8 SHE NEEDS ABOUT 20 MINUTES OR SO TO GET TO THE  
9 TELEPHONE. SHE IS READY. SO DO YOU HAVE ANY IDEA HOW  
10 LONG YOU ARE GOING TO BE?

11 MR. MAAZEL: FOR REDIRECT?

12 MR. LIEB: 20 TO 30 MINUTES.

13 MR. ARONCHICK: OKAY. SO COULD WE AT  
14 LEAST TRY TO GET MS. KOTULA IN?

15 THE COURT: ABSOLUTELY. I ABSOLUTELY --  
16 YOU ARE GOING TO CROSS-EXAMINE THIS WITNESS FOR  
17 30 MINUTES, YOU THINK?

18 MR. LIEB: THAT'S MY BEST ESTIMATE.

19 THE COURT: OKAY. YES.

20 MR. FIELD: YOUR HONOR, WE CAN TALK  
21 SCHEDULING WHEN IT COMES TO IT. I JUST WANT TO PUT ON  
22 THE RECORD ONE NAME THAT WILL COME UP FOR THE CITY,  
23 WHICH IS MR. LYNCH, THE EXECUTIVE DIRECTOR OF THE BOARD  
24 OF ELECTIONS, IS ONE OF THE WITNESSES. THERE IS A  
25 SPECIAL ELECTION NEXT TUESDAY, AS THE COURT MAY BE

1       AWARE. TO THE EXTENT WE CAN FINISH THIS WEEK, HE WILL  
2       BE UNAVAILABLE FOR SOME COURSE OF TIME THEREAFTER AS THE  
3       BOARD OF ELECTIONS WORKS TO CERTIFY THAT ELECTION.

4               THE COURT: I AM PREPARED TO -- I DON'T  
5       HAVE ANYTHING GOVERNED BY THE SPEEDY TRIAL ACT THIS  
6       WEEK. AND SO THAT MEANS I CAN CONTINUE STUFF. THE  
7       CRIMINAL CONTINUANCE IS MORE PROBLEMATIC. I DON'T KNOW  
8       IF IT'S GOING TO BE REQUESTED, IF IT'S NOT REQUESTED,  
9       THEN IT HAS TO GO. IF IT IS REQUESTED, THEN I HAVE TO  
10      DETERMINE WHETHER THE SPEEDY TRIAL ACT PROVISIONS ARE  
11      MET.

12             MR. LIEB: I'M SORRY. JUST A  
13      HOUSEKEEPING MATTER, BEFORE I BEGAN MY CROSS  
14      EXAMINATION, I THOUGHT THERE WAS WHAT I WOULD DESCRIBE  
15      AS A BAG OF USB'S THAT WAS SOMEWHERE --

16             THE COURT: A BAG OF WHAT?

17             MR. LIEB: USB MEMORY STICKS.

18             THE COURT: WHILE WE TAKE THE BREAK, WHY  
19      DON'T YOU --

20             MR. LIEB: I WAS ASKING FOR PERMISSION.

21             THE COURT: OKAY.

22             (BREAK TAKEN.)

23             THE COURT: PLEASE BE SEATED.

24             MR. LIEB.

25             CROSS EXAMINATION



1 BY MR. LIEB:

2 Q. GOOD AFTERNOON, SIR. DURING YOUR DIRECT --  
3 TOWARD THE END OF YOUR DIRECT EXAMINATION THE COURT  
4 ASKED YOU A SERIES OF QUESTIONS ABOUT HOW IT MIGHT COME  
5 TO PASS THAT SOMEONE WHO IS UP TO NO GOOD MIGHT ATTEMPT  
6 TO COMPROMISE THE SECURITY OF THE MACHINES. DO YOU  
7 RECALL THOSE QUESTIONS, SIR?

8 A. YES.

9 Q. WE WILL DISCUSS SOME OF THAT IN A BIT MORE  
10 DETAIL IN A LITTLE WHILE.

11 REGARDLESS OF HOW DIFFICULT OR EASY IT  
12 MIGHT BE TO COMPROMISE THE INTEGRITY OF THE MACHINES,  
13 THE REASON FOR HAVING A VOTER-VERIFIABLE PAPER RECORD IS  
14 TO MAKE SURE IT DOESN'T HAPPEN, RIGHT?

15 A. TO MAKE SURE WHAT?

16 Q. TO MAKE SURE THAT ANY MISTAKE OR MALFEASANCE  
17 DOES NOT AFFECT THE RESULTS OF AN ELECTION, RIGHT?

18 A. YES.

19 Q. THAT'S WHAT VOTER-VERIFIABLE PAPER RECORDS ARE  
20 FOR, RIGHT?

21 A. YES.

22 Q. AND YOU HAVE BEEN HERE FOR THE BULK OF THE LAST  
23 FEW DAYS, RIGHT, SIR?

24 A. YES.

25 Q. PERHAPS TO YOUR CHAGRIN. AND YOU HEARD THE

1 TESTIMONY ABOUT THIS SETTLEMENT AGREEMENT THAT AFTER ALL  
2 IS WHAT THIS PROCEEDING IS ABOUT, YES, SIR?

3 A. YES.

4 Q. IN THAT SETTLEMENT AGREEMENT YOU HAVE HEARD, I  
5 PRESUME, THAT PENNSYLVANIA IS REQUIRED TO CERTIFY  
6 MACHINES WITH A VOTER-VERIFIABLE RECORD OF EACH VOTE,  
7 RIGHT?

8 A. THAT'S MY UNDERSTANDING, YES.

9 Q. AND ES&S BELIEVES THAT HAVING PAPER  
10 VOTER-VERIFIABLE RECORDS OF EACH VOTE IS IMPORTANT,  
11 RIGHT?

12 A. YES.

13 Q. AND IN FACT, YOU AS A COMPANY HAVE MOVED AWAY  
14 FROM SELLING PAPERLESS MACHINES, STARTING IN OR ABOUT  
15 2018. THAT'S CORRECT, SIR, RIGHT?

16 A. YES, AS THE PRIMARY VOTING CHANNEL, YES.

17 Q. YOU STILL HAVE SOME PAPERLESS PRODUCTS, RIGHT?

18 A. THAT ARE ONLY USED FOR THINGS LIKE CURBSIDE  
19 VOTING FOR DISABLED VOTERS.

20 Q. BUT IN THE MAIN YOU ARE MOVING TOWARD HAVING  
21 VOTER-VERIFIABLE PAPER RECORDS IN ALL OF -- IN YOUR  
22 PRODUCTS, RIGHT?

23 A. CORRECT.

24 Q. AND THAT'S IN PART BECAUSE YOU ARE A BUSINESS,  
25 RIGHT?

1 A. YES.

2 Q. AND YOU ARE READING THE MARKET?

3 A. YES.

4 Q. AND THAT'S WHERE THE MARKET IS GOING.

5 A. YES.

6 Q. AND YOU AS A COMPANY ALSO BELIEVE THAT IT IS  
7 IMPORTANT TO HAVE THOSE PAPER RECORDS TO ENSURE THAT IF  
8 SOMETHING GOES WRONG, THE RESULTS OF THE ELECTION WON'T  
9 BE COMPROMISED, RIGHT?

10 A. YEAH, UNTIL SUCH TIME AS THERE IS TECHNOLOGY  
11 AVAILABLE TO MAKE PAPERLESS VOTING SECURE AND  
12 VERIFIABLE.

13 Q. RIGHT.

14 A. TO THE SATISFACTION OF THE INDUSTRY AND THE  
15 CUSTOMERS.

16 Q. NOW, WE WERE -- YOU WERE TALKING ON DIRECT ABOUT  
17 THREE DIFFERENT POTENTIAL VULNERABILITIES THAT DR.  
18 HALDERMAN HAD IDENTIFIED IN THE EXPRESSVOTE XL SYSTEM.  
19 DO YOU RECALL THAT TESTIMONY, SIR?

20 A. YES, I THINK SO.

21 Q. AND THE THIRD OF THOSE THREE THAT COUNSEL ASKED  
22 YOU ABOUT WAS ABOUT THE POSSIBILITY THAT THE XL MIGHT  
23 CAST A BALLOT THAT HAD BEEN REPORTED BUT WHICH THE VOTER  
24 ACTUALLY WANTED TO SPOIL.

25 A. RIGHT. AND WE INDICATED THAT THAT IS A PAPER

1 BALLOT SCANNER/TABULATOR CONCERN ACROSS ALL OF THOSE  
2 PRODUCTS.

3 Q. RIGHT. YOU INDICATED IN FACT THAT THAT PROBLEM  
4 HAPPENS ALL THE TIME WITH OPTICAL SCANNERS, RIGHT?

5 MR. ARONCHICK: OBJECTION.

6 THE WITNESS: NO, THAT WASN'T WHAT WAS  
7 SAID.

8 MR. WIYGUL: OBJECTION.

9 THE COURT: OVERRULED. GO AHEAD. FINISH  
10 YOUR ANSWER.

11 THE WITNESS: NO, THAT IS NOT WHAT I  
12 INDICATED.

13 BY MR. LIEB:

14 Q. OKAY. YOU RECALL GIVING TESTIMONY ABOUT THE  
15 POSSIBILITY THAT WITH AN OPTICAL SCANNER, ASIDE FROM THE  
16 EXPRESSVOTE XL, THERE MIGHT BE THE POSSIBILITY THAT A  
17 VOTER COULD FEED IN HIS BALLOT, THERE MIGHT BE AN  
18 INADVERTENT OVERVOTE AND IT WOULD BE SCANNED BY THE  
19 MACHINE AND THEN SPIT BACK OUT, RIGHT? DO YOU RECALL  
20 THAT TESTIMONY?

21 A. YES.

22 Q. AND YOUR POINT WAS THAT THE PROBLEM THAT DR.  
23 HALDERMAN IDENTIFIED WITH THE XL COULD ALSO OCCUR WITH  
24 AN OPTICAL SCANNER THAT WAS FREESTANDING, RIGHT?

25 A. YES. IF SUFFICIENT SECURITY MEASURES WERE

1 DEFEATED, THAT IS SOMETHING THAT NEEDS TO BE PROTECTED  
2 ON ALL PAPER BALLOT SCANNERS, RIGHT.

3 THE COURT: IF YOU CAN SPEAK INTO THE  
4 MICROPHONE. BRING THE MICROPHONE A LITTLE CLOSER.  
5 THANK YOU. I'M SORRY.

6 BY MR. LIEB:

7 Q. AND YOU USED THE PHRASE IN YOUR TESTIMONY THAT  
8 THAT HAPPENS ALL THE TIME, RIGHT?

9 A. NO, THAT WAS NOT WHAT I WAS REFERRING TO WHEN I  
10 SAID ALL THE TIME.

11 Q. OKAY. WHAT HAPPENS ALL THE TIME?

12 A. THAT COMMENT WAS MORE RELATED TO PROGRAMMING.  
13 SO WHEN YOU ARE PROGRAMMING ELECTION -- AND I DON'T KNOW  
14 IF "ALL THE TIME" WAS AS ACCURATE AS IT HAS HAPPENED  
15 WHERE --

16 THE COURT: WHAT HAS HAPPENED?

17 THE WITNESS: -- PAPER BALLOTS --- WHEN  
18 PAPER -- HAND-MARKED PAPER BALLOTS DO NOT COUNT IN A WAY  
19 THAT IS CONSISTENT WITH HOW THE VOTER INTENDED TO MARK  
20 THEM AND WERE ABLE TO VERIFY.

21 BY MR. LIEB:

22 Q. AND THAT HAS HAPPENED ON OCCASION WITH YOUR OWN  
23 OPTICAL SCANNER PRODUCT, THE DS200.

24 A. DUE TO THE PROGRAMMING, NOT THE SOFTWARE.

25 Q. RIGHT. ON OCCASION, DESPITE YOUR BEST EFFORTS,

1 ALL OF THESE MACHINES CAN MALFUNCTION AT TIMES, RIGHT?

2 A. MALFUNCTION IS GENERALLY A HARDWARE THING.

3 SOFTWARE IS LESS COMMON. SO DEFINE MALFUNCTION.

4 Q. WELL, LET'S -- HARDWARE MALFUNCTIONS CAN HAPPEN  
5 NOTWITHSTANDING YOUR BEST EFFORTS, RIGHT?

6 A. YES.

7 Q. AND SOFTWARE MALFUNCTIONS CAN HAPPEN  
8 NOTWITHSTANDING YOUR BEST EFFORTS, RIGHT?

9 A. YES. IT WOULD HAVE TO BE -- A MALFUNCTION IS  
10 GENERALLY SOMETHING THAT THE SYSTEM HAS BEEN TESTED AND  
11 PROVEN TO WORK, AND THEN ALL OF A SUDDEN WHAT YOU HAVE  
12 TESTED DOES NOT WORK, AND THAT CONDITION HAS CHANGED.

13 Q. OKAY.

14 A. AS OPPOSED TO -- SO I DON'T KNOW IF YOU ARE  
15 REFERRING TO A BUG, OR --

16 Q. IRRESPECTIVE OF THE TECHNICAL DEFINITION OF  
17 MALFUNCTION THAT YOU MAY THINK FITS, NOTWITHSTANDING  
18 YOUR BEST EFFORTS, SOMETIMES THE SOFTWARE DOES NOT WORK  
19 AS INTENDED, RIGHT?

20 A. I GUESS YOU COULD SAY THAT.

21 Q. ALL ELECTION SYSTEMS OF EVERY KIND HAVE  
22 VULNERABILITIES, RIGHT?

23 A. ALL ELECTION SYSTEMS COULD HAVE VULNERABILITIES,  
24 YES.

25 Q. ALL HAVE POTENTIAL SHORTCOMINGS, RIGHT?

1 A. YES.

2 Q. AND THE POINT OF REQUIRING VOTER-VERIFIABLE  
3 PAPER RECORDS IS TO BE ABLE TO COMPARE WHAT THE  
4 ELECTRONIC MACHINE THINKS IS THE RESULT WITH THE WRITTEN  
5 RECORD OF THE VOTER'S INTENT AND MAKE SURE IT'S RIGHT,  
6 CORRECT?

7 A. YEAH. THAT'S ONE OF THE REASONS FOR DOING AN  
8 AUDIT.

9 Q. OKAY. AND WHEN YOU ARE DOING THAT PROCESS, OF  
10 COMPARING WHAT THE MACHINE THINKS THE RESULT WAS WITH  
11 THE WRITTEN RECORD OF THE VOTER'S INTENT, THAT PROCESS  
12 ONLY WORKS IF THE PIECE OF PAPER ACTUALLY REFLECTS WHAT  
13 THE VOTER'S INTENT WAS, RIGHT?

14 A. YES.

15 THE COURT: MR. LIEB, YOU ARE REPEATING  
16 WHAT IS IN YOUR MOTION. I AM NOT SURE WHERE YOU ARE  
17 GOING WITH THIS.

18 MR. LIEB: I WAS JUST ABOUT TO MOVE ON TO  
19 ANOTHER SUBJECT.

20 THE COURT: OKAY.

21 BY MR. LIEB:

22 Q. ON DIRECT EXAMINATION YOU WERE ASKED ABOUT THE  
23 MANUFACTURING OF THE EXPRESSVOTE XL. DO YOU RECALL  
24 THAT?

25 A. YES.

1 Q. YOU TESTIFIED THAT THERE ARE VARIOUS COMPONENTS,  
2 RIGHT?

3 A. YES.

4 Q. AND THEN THOSE COMPONENTS ARE ASSEMBLED INTO THE  
5 MACHINE, RIGHT?

6 A. YES.

7 Q. WHERE, BY WHICH I MEAN IN WHAT COUNTRIES ARE THE  
8 COMPONENTS ASSEMBLED?

9 A. THE FINAL ASSEMBLY IS DONE IN THE UNITED STATES.

10 Q. THAT WAS A POORLY PHRASED QUESTION. IN WHAT  
11 COUNTRIES ARE THE COMPONENTS MADE?

12 A. ANY NUMBER OF COUNTRIES. TYPICALLY, A LOT OF  
13 THE COMPONENTS ARE MADE IN ASIA, AND THEN PUT TOGETHER  
14 IN DIFFERENT ASSEMBLY PROCESSES.

15 Q. SO THERE ARE MULTIPLE ASSEMBLY PROCESSES OF THE  
16 COMPONENTS, RIGHT?

17 A. THERE CAN BE, YES.

18 Q. IT'S NOT JUST ONE FINAL ASSEMBLY PROCESS, RIGHT?

19 A. YES.

20 Q. HOW MANY INTERVENING ASSEMBLY PROCESSES ARE  
21 THERE?

22 A. I GUESS THERE IS -- YOU KNOW, IT DEPENDS HOW  
23 MANY COMPONENTS THERE ARE IN THERE. SO THERE IS  
24 MECHANICAL COMPONENTS THAT ARE, YOU KNOW, SUBASSEMBLIES  
25 INTO ASSEMBLIES INTO -- SO I DON'T KNOW IF I COULD SAY.



1 THE COURT: WHY DON'T WE TALK ABOUT THIS  
2 MACHINE. ASK -- WHY DON'T YOU -- SINCE I ASKED MY  
3 QUESTIONS ABOUT THIS MACHINE, IF YOU WOULD DO THE SAME I  
4 WOULD BE GRATEFUL.

5 BY MR. LIEB:

6 Q. WHAT COUNTRIES ARE THE COMPONENTS IN THAT  
7 MACHINE MADE IN?

8 A. THERE ARE COMPONENTS MADE IN -- I DON'T KNOW IF  
9 I COULD SAY WHERE EVERY COMPONENT IS MADE IN, BUT THERE  
10 ARE COMPONENTS MADE IN TAIWAN. THERE'S COMPONENTS MADE  
11 IN CHINA. THERE'S COMPONENTS MADE IN -- LET ME THINK.  
12 I AM JUST TRYING TO GO THROUGH THE DIFFERENT PARTS,  
13 PROBABLY VARIOUS OTHER PLACES.

14 Q. AND THOSE ARE MADE BY OTHER MANUFACTURERS FROM  
15 WHOM YOU PURCHASE THE PRODUCTS, RIGHT?

16 A. YEAH. YEAH.

17 Q. AND LET'S TALK ABOUT THE ASSEMBLY PROCESSES THAT  
18 OCCUR BEFORE YOU GET TO THE FINAL ASSEMBLY. WHERE DO  
19 THOSE ASSEMBLY PROCESSES OCCUR?

20 A. THEY CAN -- SOME OF THEM OCCUR IN -- LET ME SEE.  
21 SOME OF THEM OCCUR IN CHINA. I THINK SOME OF THEM OCCUR  
22 IN TAIWAN.

23 Q. THOSE DON'T OCCUR AT ES&S, DO THEY?

24 A. SOME OF THE SUBCOMPONENTS, NO.

25 Q. AND THEN THE FINAL ASSEMBLY OF THE VARIOUS

1 ASSEMBLED SUBCOMPONENTS OCCURS WHERE?

2 A. IN OMAHA.

3 Q. YOU WERE ASKED QUESTIONS BY THE COURT ABOUT YOUR  
4 AWARENESS OF WHETHER -- WELL, IT MAY HAVE BEEN BY  
5 COUNSEL. I APOLOGIZE. YOU WERE ASKED QUESTIONS BY  
6 COUNSEL ABOUT YOUR AWARENESS OF WHETHER THERE HAD EVER  
7 BEEN ANY DISCREPANCIES IN THE RESULTS OF ELECTIONS  
8 PERFORMED USING THE EXPRESSVOTE XL. DO YOU RECALL THAT  
9 TESTIMONY?

10 A. YES.

11 Q. SO, FOR EXAMPLE, YOU TESTIFIED THAT YOU WERE NOT  
12 AWARE OF THERE HAVING BEEN AN ELECTION IN WHICH THERE  
13 WAS A MISMATCH BETWEEN THE BARCODE AND THE TEXT ON THE  
14 SUMMARY CARD, CORRECT?

15 A. CORRECT.

16 Q. NOW IN ORDER TO KNOW WHETHER THERE WAS A  
17 MISMATCH BETWEEN THE BARCODE AND THE TEXT ON THE SUMMARY  
18 CARD, THE ELECTION RESULT WOULD HAVE TO BE AUDITED,  
19 CORRECT?

20 A. CORRECT.

21 Q. YOU HAVE HEARD TESTIMONY SITTING HERE TODAY  
22 ABOUT THE PILOT RISK-LIMITING AUDIT THAT TOOK PLACE IN  
23 THE CITY OF PHILADELPHIA IN THE MOST RECENT 2019  
24 ELECTION. YOU HEARD THAT?

25 A. CORRECT.

1 Q. OTHER THAN THAT, ARE YOU AWARE OF AUDITS HAVING  
2 BEEN PERFORMED ON THE ELECTION RETURNS FOR WHICH THE  
3 ES&S EXPRESSVOTE XL WAS USED?

4 A. I WAS THINKING THERE MIGHT HAVE BEEN ONE IN  
5 UNION COUNTY, NEW JERSEY, BUT OTHER THAN THAT, I AM NOT  
6 AWARE OF ANOTHER ONE.

7 Q. MAYBE ONE OTHER JURISDICTION ONCE.

8 A. RIGHT.

9 Q. SO WHEN YOU SAY YOU ARE NOT AWARE OF THAT EVER  
10 HAVING HAPPENED, REALLY THE ONLY BASIS FOR THAT IS ONE  
11 OR MAYBE TWO AUDITS ONE TIME IN ONE OR MAYBE TWO YEARS,  
12 RIGHT?

13 A. OKAY, YES.

14 Q. WELL, SIMILARLY WITH REGARD TO THE PRINthead  
15 ISSUE, YOU ALSO TESTIFIED THAT YOU WERE UNAWARE OF THAT  
16 EVER HAVING HAPPENED IN ELECTION IN WHICH THE  
17 EXPRESSVOTE XL WAS USED, RIGHT?

18 A. CORRECT.

19 Q. AND SIMILARLY, IN ORDER TO FIND THAT OUT,  
20 WHETHER THAT HAD ACTUALLY HAPPENED, THE RETURNS WOULD  
21 NEED TO BE AUDITED, RIGHT?

22 A. YES. THERE IS PROBABLY A LITTLE MORE INFERENCE  
23 THAT CAN BE IN THAT CIRCUMSTANCE JUST BECAUSE OF THE  
24 MECHANICAL NATURE OF THE SYSTEM.

25 Q. BUT --

1 THE COURT: WELL, WAIT A MINUTE. I  
2 THOUGHT I HEARD YOU TESTIFY THAT IF THE MACHINE WERE  
3 PRINTING FROM TOP TO BOTTOM, INSTEAD OF FROM BOTTOM TO  
4 TOP, IT WOULD MAKE NOISE, A PRINTING NOISE GOING THE  
5 WRONG WAY.

6 THE WITNESS: YES.

7 THE COURT: HAVE YOU EVER RECEIVED ANY  
8 COMPLAINTS -- AS FAR AS YOU KNOW HAS YOUR COMPANY EVER  
9 RECEIVED ANY COMPLAINTS ABOUT ANY KIND OF PRINTING  
10 IRREGULARITIES?

11 A. NO. AND I HAVE BEEN IN A NUMBER OF POLL SITES  
12 IN LIVE ELECTIONS WHERE THE MACHINE WAS GOING AND I HAVE  
13 NOT OBSERVED ANY.

14 BY MR. LIEB:

15 Q. AND JUST TO BE CLEAR, SINCE THE COURT RAISED THE  
16 SUBJECT OF THE PRINthead, BUT LET'S TALK ABOUT IT FOR A  
17 LITTLE WHILE. FIRST OF ALL, YOU TESTIFIED ABOUT THE  
18 DIFFERENT SPEEDS AT WHICH THE SUMMARY CARD GOES THROUGH  
19 THE PRINthead ONE WAY TO BE PRINTED AND THEN BACK INTO  
20 THE MACHINE THE OTHER DIRECTION, RIGHT?

21 A. NO. IT'S REALLY DIFFERENT SPEEDS BETWEEN WHEN  
22 IT'S PRINTING AND WHEN IT'S NOT.

23 Q. DIFFERENT SPEEDS BETWEEN WHEN IT'S PRINTING AND  
24 WHEN IT'S NOT, RIGHT?

25 A. YES.

1 Q. AND WHAT MAKES THOSE SPEEDS HAPPEN IS SOME SORT  
2 OF ROTOR THAT IS PUSHING THE PAPER, I GATHER?

3 A. IT IS A STEPPER MOTOR DRIVING THE ROLLERS THAT  
4 PUSH THE PAPER ALONG.

5 Q. AND IT'S SOFTWARE THAT TELLS THAT MOTOR WHAT  
6 SPEED TO RUN AT, DEPENDING ON THE FUNCTION THAT'S BEING  
7 PERFORMED, RIGHT?

8 A. YES. IT'S ACTUALLY PROBABLY MORE CONSIDERED  
9 FIRMWARE IN THE PAPER PATH.

10 Q. BY THE WAY, SINCE YOU ARE RAISING THESE COMPUTER  
11 POINTS, IT OCCURS TO ME I SHOULD ASK, DO YOU HAVE ANY  
12 DEGREES IN COMPUTER SCIENCE?

13 A. I DO NOT.

14 Q. HAVE YOU EVER PUBLISHED ANY PEER REVIEWED  
15 RESEARCH IN THE FIELD OF COMPUTER SECURITY?

16 A. I HAVE NOT.

17 THE COURT: HE HAS NOT BEEN QUALIFIED AS  
18 AN EXPERT WITNESS.

19 MR. LIEB: I THINK IT'S WELL --

20 THE COURT: THIS IS WHAT I USUALLY HEAR  
21 WHEN SOMEONE IS BEING QUALIFIED AS AN EXPERT WITNESS.  
22 HE HAS NOT BEEN QUALIFIED AS ONE.

23 MR. LIEB: YOUR HONOR, I THINK HE HAS  
24 GIVEN TESTIMONY ABOUT VARIOUS COMPUTER SYSTEMS THAT ARE  
25 DESIGNED TO DO THINGS, AND HE IS DISPUTING THE

1 CONCLUSIONS OF OUR EXPERTS. SO I THINK IT'S FAIR GAME  
2 TO POINT OUT.

3 THE COURT: HE IS DISPUTING THE  
4 CONCLUSIONS OF YOUR EXPERTS WITH RESPECT TO THE MACHINE  
5 HE WORKS ON, AND HE IS TESTIFYING AS A FACT WITNESS AS  
6 TO THE MACHINE HE WORKS ON.

7 WHY DON'T YOU GO AHEAD?

8 THE WITNESS: I WOULD ALSO SAY I AM  
9 DISPUTING SOME OF THE THINGS THAT WERE PUT OUT THERE BY  
10 SOME OF THESE EXPERTS IN UN-PEER REVIEWED FORM.

11 Q. DO YOU KNOW HOW TO CODE?

12 A. I HAVE SOME BASIC -- I CAN DO SOME VERY SIMPLE  
13 CODING. SO VISUAL BASIC, FORTRAN, ASSEMBLY, CPLUSPLUS,  
14 SOME BASIC STUFF.

15 Q. SO RETURNING TO THE QUESTION OF EVIDENCE OF  
16 THERE EVER HAVING BEEN -- THE PRINTHEAD ISSUE EVER  
17 COMING UP IN AN ELECTION FROM WHICH THE EXPRESSVOTE XL  
18 WAS USED. ONE POSSIBLE WAY OF FINDING OUT ABOUT THAT  
19 WOULD BE AN AUDIT, AND WE ARE IN AGREEMENT THAT THAT'S  
20 ONLY HAPPENED IN ONE OR MAYBE TWO JURISDICTIONS, ONCE OR  
21 MAYBE TWICE, RIGHT?

22 A. YES.

23 Q. ANOTHER POSSIBLE WAY OF FINDING OUT ABOUT THAT  
24 WOULD BE A HUMAN -- EITHER A POLL WORKER OR A VOTER  
25 HEARING THAT THE MACHINE WAS MAKING A DIFFERENT SOUND AS

1 THE SUMMARY CARD WENT BACK IN, RIGHT?

2 A. YES.

3 Q. OKAY. AND IN ORDER FOR THEM TO MAKE ANYTHING OF  
4 THAT, THEY WOULD HAVE TO KNOW WHAT SOUND THE MACHINE WAS  
5 SUPPOSED TO MAKE AT THAT TIME, RIGHT?

6 A. YES.

7 Q. THE THIRD OF THE THREE POTENTIAL VULNERABILITIES  
8 THAT DR. HALDERMAN IDENTIFIED THAT HE TESTIFIED ABOUT,  
9 THE POSSIBILITY THAT A SPOILED BALLOT MIGHT NONETHELESS  
10 BE CAST. NOW, YOU BROUGHT UP THE POINT THAT IT'S  
11 POSSIBLE FOR THIS TO HAPPEN ON OPTICAL SCANNERS,  
12 SEPARATE OPTICAL SCANNERS, RIGHT?

13 A. YES.

14 Q. IF A VOTER IS USING A VOTING SYSTEM WITH A  
15 SEPARATE OPTICAL SCANNER, THE VOTER HAS ONLY MADE IT TO  
16 THAT OPTICAL SCANNER IF THEY WANT TO CAST THEIR BALLOT,  
17 RIGHT?

18 A. I WOULD ASSUME SO.

19 Q. RIGHT. THAT'S HOW IT WORKS. YOU EITHER MARK IT  
20 BY HAND, OR YOU TAKE IT OUT OF THE BALLOT-MARKING DEVICE  
21 AND THEN YOU LOOK AT IT AND THEN IF YOU WANT TO CAST IT,  
22 YOU GO TO THE SCANNER. THAT'S WHAT THE SCANNER IS FOR.

23 A. RIGHT. BUT ONCE THE ACTIVITY AT THE SCANNER  
24 HAPPENS, IT IS NOT ALWAYS THE CASE THAT THE VOTER  
25 ULTIMATELY WANTS TO --

1 Q. WE ARE GETTING AHEAD OF OURSELVES. SO WITH THE  
2 SEPARATE OPTICAL SCANNER, THE VOTER ONLY MAKES IT THERE  
3 IF THEY WANT TO CAST THEIR BALLOT, RIGHT?

4 A. GENERALLY, YES. I WOULD THINK SO, YES.

5 Q. BUT THE ISSUE THAT DR. HALDERMAN IS TALKING  
6 ABOUT WITH THE EXPRESSVOTE XL IS THAT EVEN THE BALLOTS  
7 THAT THE VOTER KNOWS HE WANTS TO SPOIL ARE SCANNED BY  
8 THE MACHINE, RIGHT?

9 A. AS I WAS SAYING, SIMILAR TO THE USE CASE IN THE  
10 PRECINCT SCANNER.

11 Q. RIGHT. WITH THE PRECINCT SCANNER, THE VOTER CAN  
12 TAKE A BALLOT HE KNOWS HE WANT TO CAST, WALK IT OVER TO  
13 THE SCANNER, AND THEN THE SCANNER --

14 THE COURT: WE ARE REPEATING OURSELVES,  
15 AND AGAIN I AM NOT SURE WHERE YOU ARE GOING WITH THIS.

16 GO AHEAD.

17 MR. LIEB: WITH ALL RESPECT, JUDGE, I  
18 DON'T THINK THIS HAS BEEN COVERED.

19 THE COURT: THERE IS A LOT THAT HAS NOT  
20 BEEN COVERED THAT HAS LITTLE TO DO WITH THIS DISPUTE AND  
21 THIS SEEMS TO BE ONE OF THOSE TOPICS.

22 GO AHEAD.

23 THE WITNESS: SO I WOULD OFFER IN BOTH  
24 CASES THE VOTER IS GOING TO MARK THEIR CHOICES, AND THEN  
25 AT SOME POINT AFTER THEY HAVE MARKED IT, THEY ARE GOING



1 TO CHOOSE TO NOT CAST THOSE, AND THAT IS SIMILAR IN BOTH  
2 CASES.

3 BY MR. LIEB:

4 Q. ON YOUR DIRECT EXAMINATION YOU TALKED ABOUT  
5 DIRECT RECORDING ELECTRONIC MACHINES WITH A VOTER  
6 VERIFIED PAPER AUDIT TRAIL, RIGHT?

7 A. YES.

8 Q. DRE WITH VVPAT, RIGHT?

9 A. YES.

10 Q. I WANT TO TALK ABOUT HOW A DRE WITH VVPAT WORKS  
11 FROM THE VOTER EXPERIENCE PERSPECTIVE. ARE YOU WITH ME?

12 A. OKAY.

13 Q. IF A VOTER IS VOTING ON A DRE WITH VVPAT, THEY  
14 ARE GOING TO PUSH A BUTTON ON THE SCREEN, RIGHT?

15 MR. ARONCHICK: MAY I BE EXCUSED FOR  
16 THREE MINUTES.

17 THE COURT: SURE.

18 BY MR. LIEB:

19 Q. THEY ARE GOING TO PUSH A BUTTON ON THE SCREEN,  
20 RIGHT?

21 A. THEY ARE GOING TO MAKE THEIR SELECTIONS ON THE  
22 SCREEN OR USE AN ASSISTIVE TECHNOLOGY.

23 Q. ASSUMING FOR THE MOMENT THAT THEY ARE NOT USING  
24 ASSISTED TECHNOLOGY, THEY MAKE THE SELECTION ON THE  
25 SCREEN --

1 A. CORRECT.

2 Q. -- AND THEN UNBEKNOWNST TO THEM AT THAT TIME THE  
3 MACHINE WILL RECORD THEIR SELECTION IN ITS MEMORY,  
4 RIGHT?

5 A. DEFINE MEMORY.

6 Q. THE MACHINE WILL RECORD THEIR SELECTION  
7 SOMEWHERE IN THE MACHINE, RIGHT?

8 A. YEAH, I GUESS IT WILL HOLD IT IN MEMORY, AND  
9 THEN AT SOME POINT IT WILL PERMANENTLY RECORD, IS THE  
10 WAY IT TENDS TO WORK.

11 Q. IT WILL HOLD IT, RIGHT?

12 A. YES.

13 Q. THEN A RECEIPT WILL BE GENERATED, RIGHT?

14 A. CORRECT.

15 Q. AND THEN THE VOTER WILL LOOK AT THAT RECEIPT,  
16 RIGHT?

17 A. YES.

18 Q. AND THE VOTER WILL, AT LEAST IN THEORY, VERIFY  
19 THAT WHAT IS ON THE RECEIPT MATCHES THEIR INTENT, RIGHT?

20 A. YES.

21 Q. AND THEN THE VOTER WILL PUSH A BUTTON?

22 A. RIGHT.

23 Q. AND THEN THE VOTE WILL ACTUALLY BE RECORDED AND  
24 CAST, RIGHT?

25 A. YEAH. RECORDED TO PERMANENT MEMORY AND THE

1 PAPER ADVANCED.

2 Q. SO NOW LET'S TALK ABOUT THE EXPRESSVOTE XL FROM  
3 THE VOTER'S PERSPECTIVE. THE VOTER IS GOING TO MAKE THE  
4 SELECTION ON THE SCREEN, RIGHT?

5 A. YES.

6 Q. AND UNBEKNOWNST TO THEM, THEIR SELECTION IS  
7 GOING TO BE TEMPORARILY RECORDED IN THE MEMORY OF THE  
8 SYSTEM, RIGHT?

9 A. YES.

10 Q. ALSO UNBEKNOWNST TO THEM AT THAT TIME, THE  
11 SYSTEM IS GOING TO PRINT SOMETHING AND SCAN IT.

12 A. YES.

13 Q. THEN THE VOTER IS GOING TO SEE THE SUMMARY CARD,  
14 RIGHT?

15 A. YES.

16 Q. THEN THE VOTER IS GOING TO, AT LEAST IN THEORY,  
17 LOOK AT THE SUMMARY CARD, RIGHT?

18 A. YES.

19 Q. THE VOTER IS GOING TO, AT LEAST IN THEORY,  
20 VERIFY THAT WHAT IS ON THE SUMMARY CARD MATCHES THEIR  
21 INTENT, RIGHT?

22 A. YES.

23 Q. THE VOTER IS GOING TO PUSH A BUTTON ON THE  
24 SCREEN.

25 A. YES.

1 Q. AND AT THAT POINT THE VOTE WILL BE RECORDED,  
2 RIGHT?

3 A. YEAH. WHAT THEY -- THE DATA FROM WHAT THEY  
4 ENTERED IS TOSSED. THE DATA FROM WHAT THEY SCANNED IS  
5 RECORDED, YES.

6 Q. SO FROM THE VOTER'S PERSPECTIVE IT'S EXACTLY THE  
7 SAME.

8 A. IT'S A BLACK BOX.

9 Q. THAT WORKS EXACTLY LIKE A VV -- A DRE WITH A VV,  
10 RIGHT?

11 A. I DON'T THINK IT MATTERS WHAT THE VOTER THINKS  
12 IS HAPPENING.

13 Q. I THINK IT MATTERS.

14 A. IT'S A PERCEPTION. I AM A TECHNICAL WITNESS  
15 BUT --

16 Q. CAN YOU JUST ANSWER MY QUESTION, PLEASE?

17 A. IF THE VOTER WILL SEE THE SAME THING IN BOTH  
18 CASES?

19 Q. FROM A VOTER PERSPECTIVE, FROM THE PERSPECTIVE  
20 OF A VOTER --

21 THE COURT: WHAT ON EARTH DOES THIS HAVE  
22 TO DO WITH YOUR MOTION TO ENFORCE THE SETTLEMENT?

23 MR. LIEB: JUDGE, AS I UNDERSTAND IT,  
24 YOUR HONOR --

25 THE COURT: YOUR MOTION TO ENFORCE HAS

1       NOTHING TO DO WITH WHAT VOTERS PERCEIVE BUT WHAT IS.

2       YOU ARE ASKING HIM ABOUT WHAT VOTERS PERCEIVE.

3                   MR. LIEB:   JUDGE, IT HAS TO DO WITH THE  
4       ORDINARY MEANING OF THE TERM "PAPER BALLOT" AND  
5       SPECIFICALLY --

6                   THE COURT:   I'M SORRY.   WHAT VOTERS  
7       PERCEIVE HAS NOTHING TO DO WITH THE ORDINARY MEANING.  
8       YOU REALLY ARE NOT MAKING A PROBATIVE POINT HERE.   I  
9       WOULD ASK YOU TO MOVE ON.

10                   MR. LIEB:   JUST TO MAKE A RECORD, JUDGE,  
11       I THINK THAT HOW THE VOTER EXPERIENCES THE SYSTEM IS  
12       HIGHLY RELEVANT TO THE ORDINARY MEANING OF THE TERMS  
13       "DRE WITH VVPAT," WHICH ARE CRITICAL TERMS IN DISPUTE.  
14       I WILL MOVE ON.  
15       BY MR. LIEB:

16       Q.       FROM A TECHNICAL PERSPECTIVE AND NOT A VOTER'S  
17       PERSPECTIVE, AFTER THE VOTER HAS MADE THEIR INITIAL  
18       SELECTION ON THE TOUCHSCREEN, THE EXPRESSVOTE XL RECORDS  
19       THAT SELECTION IN SOME KIND OF TEMPORARY MEMORY, RIGHT?

20       A.       THE SELECTIONS FROM THE SCREEN INTO TEMPORARY  
21       MEMORY, YES.

22       Q.       AND THEN IT PRINTS, RIGHT?

23       A.       PRINTS AND SCANS.

24       Q.       IN INSTANTANEOUS SUCCESSION, RIGHT?

25       A.       YES.   THEY ARE AN INTERPART SO OUT OF THE

1 PRINTER INTO THE SCANNER.

2 Q. AND THEN THAT'S WHAT IS -- I THINK IN YOUR  
3 DEMONSTRATION YOU MENTIONED SOMETHING ABOUT THE MACHINE  
4 COMPARING WHAT WAS PRINTED AND SCANNED -- PRINTED AND  
5 SCANNED WHAT WAS IN THE TEMPORARY MEMORY. DID I  
6 UNDERSTAND THAT CORRECTLY?

7 A. IT DOES COMPARE WHAT THEY ENTER AGAINST WHAT  
8 THEY -- WHAT WAS SCANNED.

9 Q. SO WHEN YOU SAY COMPARES WHAT THEY ENTERED  
10 AGAINST WHAT THEY SCANNED, YOU MEAN IT COMPARES WHAT HAS  
11 JUST APPEARED ON THAT PAPER RECORD IN THE BARCODE AND  
12 THEN INSTANTANEOUSLY SCANNED WITH WHAT WAS INPUT INTO  
13 THE TEMPORARY MEMORY MICRO SECONDS BEFORE.

14 A. THAT IS CORRECT.

15 Q. OKAY. AND THEN AFTER THE VOTER DOES THE  
16 APPROVING OF -- THE VERIFYING OF THE PAPER, THE VOTE  
17 GETS PERMANENTLY RECORDED, RIGHT?

18 A. THE VOTE FROM THE SCAN OF THE PAPER IS  
19 PERMANENTLY RECORDED, BUT THE VOTE FROM -- ENTERED ONTO  
20 THE TOUCHSCREEN IS FLUSHED.

21 Q. I UNDERSTAND.

22 BY THE COURT:

23 Q. IF WHAT IS IN THE TEMPORARY MEMORY AND WHAT IS  
24 SCANNED DON'T MATCH UP, WHAT HAPPENS?

25 A. IT EJECTS THE CARD AND DINGS AND PUTS AN ALERT

1 ON THE SCREEN, KIND OF LIKE THE ONES WE SAW WHEN I WAS  
2 MESSING AROUND WITH THE PAPER PATH. SO THE POLL WORKER  
3 WILL HEAR A DING AND IT'LL EJECT THE CARD OUT TO THE  
4 BALLOT -- OR EJECT THE BALLOT OUT OF THE --

5 Q. AND WHAT IS PUT IN THE TEMPORARY MEMORY IS WHAT  
6 IS SEEN ON THE SCREEN.

7 A. BOTH ARE. SO AGAIN --

8 Q. BOTH MEANING THE --

9 A. VOTER-ENTERED DATA AND THE CARD-SCAN DATA.

10 Q. IF THE VOTER IN A MAYORAL ELECTION SAYS I WANT  
11 TO VOTE FOR MAYOR KENNEY AND SHE PUSHES THE APPROPRIATE  
12 BUTTON, IT SHOWS UP ON THE SCREEN?

13 A. YES.

14 Q. AND THAT IS WHAT IS IN THE TEMPORARY MEMORY.

15 A. YES.

16 Q. AND SO FOR SOMEBODY TO MONKEY WITH THIS, TO HAVE  
17 THE BARCODES REFLECT SOMETHING OTHER THAN A VOTE FOR  
18 MAYOR KENNEY, THAT PERSON WOULD HAVE TO HAVE -- NOT ONLY  
19 SHOW A DISCONNECT BETWEEN WHAT IS ON THE SCREEN AND WHAT  
20 IS IN THE BARCODE, BUT WHAT IS IN THE TEMPORARY MEMORY  
21 AND WHAT'S IN THE BARCODE. OR IF THE TEMPORARY MEMORY  
22 -- OR THE TEMPORARY MEMORY HAS TO BE MONKEYED WITH. SO  
23 IF A PERSON PUSHES MAYOR KENNEY, BUT IN FACT ANOTHER  
24 CANDIDATE IS RECORDED IN THE TEMPORARY MEMORY TO COMPORT  
25 WHAT WHATEVER GOES ON TO THE BARCODES.

1       A.           YEAH.  THERE'S A FEW DIFFERENT MANNERS THAT  
2       THAT'S GOING TO HAPPEN, BUT WHAT YOU ARE ASKING IS IT SO  
3       THAT THAT DATA THAT IS LOGGED, IT HAS TO -- SHOWS ONE  
4       THING ON THE SCREEN AND IT HAS TO STORE ANOTHER THING IN  
5       EITHER THE TEMPORARY OR PERMANENT MEMORY.

6       Q.           NO.  NO.  WE HAVE BEEN TALKING ABOUT AND THE  
7       PLAINTIFFS' MOTION SAYS WHAT IS BEING READ IS THE  
8       BARCODE AND NOT NECESSARILY THE VOTER'S CHOICE.  BUT IF  
9       THE BARCODE REFLECTS WHAT IS IN THE TEMPORARY MEMORY  
10      NECESSARILY TO RECORD THE VOTE, THE VOTE WOULD NOT BE  
11      RECORDED UNLESS THEY ARE THE SAME.  YOU JUST SAID THAT.

12     A.           YES.  SO --

13     Q.           SO THAT THERE WOULD HAVE TO BE A DISCONNECT  
14     BETWEEN WHAT IS ON THE SCREEN AND WHAT GOES INTO THE  
15     TEMPORARY MEMORY.

16     A.           YES.

17     Q.           IT'S A MORE ELABORATE BIT OF SABOTAGE THAN WHAT  
18     I HAD PREVIOUSLY UNDERSTOOD.  THERE IS A MIDDLE STEP IN  
19     THERE.  THE TEMPORARY MEMORY AND THE BARCODE HAVE TO  
20     MATCH.

21     A.           YEAH.  THERE'S A FEW STEPS BECAUSE YOU HAVE TO  
22     TAKE WHAT IS ENTERED, YOU HAVE TO FORMAT IT INTO AN  
23     IMAGE OF THE CARD.  YOU HAVE TO SEND THAT IMAGE TO THE  
24     PRINTER.  YOU HAVE TO THEN SCAN AN IMAGE BACK.  THEN YOU  
25     HAVE TO DIGITALLY READ THE VALUES ON THE BARCODES.  SO



1       THERE'S A FEW DIFFERENT INTERCEPTION POINTS.

2                       THE COURT:    OKAY.

3       BY MR. LIEB:

4       Q.        ONE OF THE QUESTIONS THE COURT ASKED YOU ON YOUR  
5       EARLIER EXAMINATION WAS HOW SOMEONE WHO IS UP TO NO GOOD  
6       MIGHT COME INTO POSSESSION OF THE ELECTION MANAGEMENT  
7       SYSTEM.   DO YOU RECALL THAT TESTIMONY?

8       A.        POSSESSION OF THE ELECTION MANAGEMENT SYSTEM?

9       Q.        HOW SOMEONE MIGHT ACCESS THE SOFTWARE IF THEY  
10      WANTED TO TAMPER WITH IT.

11      A.        THE SOFTWARE ON THE MACHINE OR THE SOFTWARE THAT  
12      PROGRAMS THE ELECTION?

13      Q.        THE SOFTWARE --

14      A.        I DON'T RECALL GETTING A HOLD OF THE SOFTWARE.  
15      THE ELECTION MANAGEMENT SYSTEM, I DON'T RECALL ANY  
16      DISCUSSIONS.

17                   THE COURT:    I ASKED YOU ABOUT THE  
18      SOFTWARE THAT IS INSTALLED INTO THE MACHINE AS I RECALL.  
19      IS THAT --

20                   THE WITNESS:   YEAH.   IT WASN'T THE  
21      ELECTION MANAGEMENT SYSTEM.

22      BY MR. LIEB:

23      Q.        THERE WAS A QUESTION THAT THE JUDGE ASKED YOU  
24      ABOUT, YOU SAID YOU COULD GET IT IN OMAHA OR IN  
25      PHILADELPHIA, RIGHT?   DO YOU RECALL THAT QUESTION?

1       A.           COMPILED BINARY OF THE FILE, NOT THE ACTUAL --  
2       NOT THE ACTUAL CODE THAT IS, YOU KNOW, TYPED BY A  
3       SOFTWARE DEVELOPER.

4       Q.           IN THE INTEREST OF CLARITY, WAS THAT ANSWER IN  
5       REFERENCE TO THE ELECTION MANAGEMENT SYSTEM OR THE  
6       MACHINE-SPECIFIC LOAD FILE?

7       A.           IT WAS IN RELATION TO OUR SOFTWARE RUNNING ON  
8       THAT MACHINE.

9       Q.           OKAY. YOU TESTIFIED WHEN YOU WERE DEMOING THE  
10      MACHINE THAT THE MACHINE WILL ONLY RECOGNIZE ONE OF OUR  
11      MEDIA. DO YOU RECALL USING THAT PHRASE?

12      A.           YES.

13      Q.           THAT WAS IN REFERENCE IN THE USB MEMORY STICK  
14      THAT GETS INSERTED INTO THE TOP PART, RIGHT?

15      A.           CORRECT.

16      Q.           OKAY.

17                   MR. LIEB: MAY I APPROACH THE WITNESS,  
18      YOUR HONOR?

19                   THE COURT: SURE.

20      BY MR. LIEB:

21      Q.           SO I JUST HANDED THE WITNESS A BAG OF USB'S THAT  
22      WERE IN -- WELL, WITHDRAWN.

23                   THAT'S A BAG OF USB'S THAT I JUST GAVE  
24      YOU, RIGHT?

25      A.           IT IS.

1 Q. THAT WAS INSIDE THE CART COMPONENT OF THAT  
2 MACHINE WHEN YOU OPENED IT, RIGHT?

3 A. IT WAS.

4 Q. DO YOU KNOW HOW IT GOT THERE?

5 A. YES. IT IS -- IT IS ELECTION DEFINITIONS FROM  
6 DIFFERENT DEMO ELECTIONS, AND THEY WERE STORED IN THERE  
7 AND LOCKED AWAY SO THAT THEY WERE UNDER CONTROL.

8 Q. AND THOSE ARE BLUE MEMORY STICKS, RIGHT?

9 A. THEY ARE SPECIFIC DELKIN-MANUFACTURED MEMORY  
10 STICKS.

11 Q. WHEN YOU SAY THEY ARE SPECIFIC  
12 DELKIN-MANUFACTURED MEMORY STICKS, IS THERE A PARTICULAR  
13 BRAND OF MEMORY STICK?

14 A. YES.

15 Q. OKAY. AND THEY HAVE WRITING ON THEM THAT SAYS  
16 ELECTION SYSTEMS AND SOFTWARE, RIGHT?

17 A. CORRECT.

18 Q. AND THEY ALL HAVE THE SAME NUMBER ON THEM,  
19 RIGHT?

20 A. I BELIEVE THEY HAVE A PART NUMBER ETCHED ON  
21 THEM.

22 Q. WELL, THERE IS WHITE -- TAKE A LOOK.

23 A. AND THESE IN PARTICULAR ALSO HAVE ELECTION  
24 SYSTEMS AND SOFTWARE ETCHED ON THEM AND ALSO HAVE THE  
25 SIZE OF THE DRIVE. SO THIS ONE SAYS 4 GB, 4 GIGABYTE.

1 Q. WHEN YOU SAY "ETCHED," ARE YOU REFERRING TO THE  
2 WHITE WRITING?

3 A. YES.

4 Q. AND IF YOU LOOK AT THOSE, THEY ALL HAVE THE SAME  
5 NUMBER, AS YOU PUT IT, ETCHED ON THEM, RIGHT?

6 A. THE SAME NUMBER --

7 Q. THEY ALL HAVE 2396 ON THEM?

8 A. IF THEY HAVE THE SAME SIZE, I BELIEVE THEY WOULD  
9 HAVE THE SAME NUMBER. I WOULD HAVE TO PEEL THE LABEL  
10 OFF BECAUSE THERE ARE 2 GIG STICKS AND THERE ARE 4 GIG  
11 STICKS, AND I BELIEVE THEY HAVE A DIFFERENT NUMBER.

12 Q. DO YOU SEE ANY TWO THAT HAVE THE SAME NUMBER?

13 A. THE 4 GIG STICKS ALL HAVE THE SAME NUMBER.

14 Q. SO THERE ARE BLUE 4-GIG DELKIN MEMORY STICKS  
15 THAT ALL SAY ELECTION SYSTEMS AND SOFTWARE AND HAVE THE  
16 SAME NUMBER ON THEM, RIGHT?

17 A. YES.

18 Q. ANY OTHER IDENTIFYING CHARACTERISTICS?

19 A. NO. THEY HAVE A -- LIKE MOST USB'S THEY HAVE A  
20 LITTLE LIGHT THAT LIGHTS UP WHEN THEY ARE BEING  
21 ACCESSED.

22 Q. THEY'RE BASICALLY JUST REGULAR USB'S THAT YOUR  
23 COMPANY BUYS FROM A PARTICULAR MANUFACTURER AND WRITES  
24 ELECTION SYSTEMS AND SOFTWARE AND THE NUMBER ON, RIGHT?

25 A. YES. AND THERE'S ALSO CONTROL SET UP WITH

1 DELKIN, SO THAT IF ANYBODY TRIES TO BUY THIS PARTICULAR  
2 STICK, WE GET A PHONE CALL THAT SAYS HEY, ARE THESE GUYS  
3 AUTHORIZED TO BUY USB STICKS FROM -- THIS USB STICK FROM  
4 THEM. SO IF PHILLY SAID, WE DON'T WANT TO BUY THEM  
5 DIRECTLY FROM YOU, WE WANT TO BUY THEM FROM DELKIN, WE  
6 HAVE TO GIVE DELKIN PERMISSION TO SELL THEM THESE  
7 STICKS.

8 Q. TALKING ABOUT THE SEALS. YOU TESTIFIED THAT THE  
9 JURISDICTION HERE, MEANING PHILADELPHIA, PUT THE SEALS  
10 ON THE MACHINE THAT WE HAVE IN THE COURTROOM, RIGHT?

11 A. THAT'S CORRECT.

12 Q. AND WHEN YOU BROKE THE SEALS, YOU PULLED DOWN  
13 AND YOU BROKE THE SEAL, RIGHT?

14 A. YES.

15 Q. THIS IS LIKE A 25-CENT PIECE OF GREEN PLASTIC,  
16 RIGHT?

17 A. PROBABLY, I WOULD GUESS. I DON'T KNOW THE COST.

18 THE COURT: I BET THE CITY PAID MORE.

19 THE WITNESS: I HOPE SO.

20 MR. LIEB: WE WILL GET THERE.

21 BY MR. LIEB:

22 Q. AND YOU TESTIFIED EARLIER THAT -- WELL,  
23 WITHDRAWN.

24 YOU ARE THE PRODUCT MANAGER FOR THIS  
25 SYSTEM, RIGHT?

1 A. PRODUCT MANAGER, YES.

2 Q. PRODUCT MANAGER. YOU ARE IN CHARGE OF THE  
3 EXPRESSVOTE XL.

4 A. I AM, YES, IN CHARGE IN THE FEATURES THAT GO  
5 INTO THE PRODUCT, YES.

6 Q. FROM SOUP TO NUTS, TO USE THE PHRASE YOU USED  
7 BEFORE, RIGHT?

8 A. YES.

9 Q. THERE ARE NO SEALS ON THEM WHEN THEY ARE IN  
10 TRANSIT, ARE THERE?

11 A. I DON'T KNOW. I HAVE NOT SEEN THEM IN TRANSIT.  
12 THERE IS ANOTHER GROUP THAT IS IN CHARGE OF THE SECURITY  
13 AND TRAINS ON THOSE MACHINES.

14 Q. YOU AS THE PRODUCT MANAGER DON'T TRAVEL WITH THE  
15 MACHINES?

16 A. YEAH. THAT'S AN INVENTORY MANAGEMENT AND  
17 OPERATIONS FUNCTION IN OUR COMPANY. I AM IN CHARGE OF  
18 THE FUNCTIONALITY OF THE MACHINES.

19 Q. WE TALKED A BIT ABOUT EAC CERTIFICATION IN  
20 RESPONSE TO COUNSEL'S QUESTIONS. NOW, ES&S ALSO MAKES  
21 OR HAS MADE PAPERLESS DRE'S THAT ARE CERTIFIED BY THE  
22 FEDERAL EAC, RIGHT?

23 A. THAT'S CORRECT.

24 Q. SO WHETHER OR NOT SOMETHING IS CERTIFIED BY THE  
25 EAC HAS NOTHING TO DO WITH WHETHER IT CAN BE USED IN --

1 WELL, HAS NOTHING TO DO WITH WHETHER IT COMPLIES WITH  
2 THIS SETTLEMENT AGREEMENT, RIGHT?

3 MR. WIYGUL: OBJECTION.

4 THE COURT: YOU REALLY NEED TO ASK THE  
5 WITNESS THAT --

6 MR. LIEB: I WILL WITHDRAW.

7 BY MR. LIEB:

8 Q. NOW, WERE YOU INVOLVED IN THE PROCESS OF SELLING  
9 THIS SYSTEM TO THE CITY OF PHILADELPHIA AND/OR THE  
10 PHILADELPHIA COUNTY BOARD OF ELECTIONS?

11 A. NO, NOT REALLY.

12 Q. OKAY. WERE YOU INVOLVED IN THE NEGOTIATION OF  
13 THE CONTRACT FOR THIS SYSTEM BETWEEN ES&S AND ANY  
14 PHILADELPHIA ENTITIES?

15 A. NO.

16 MR. WIYGUL: OBJECTION TO RELEVANCE.

17 THE COURT: HE ALREADY SAID NO.

18 BY MR. LIEB:

19 Q. IT'S A FEW QUESTIONS, BUT I THINK THE RELEVANCE  
20 WILL BECOME CLEAR IN TWO OR THREE QUESTIONS. DO YOU  
21 HAVE ANY KNOWLEDGE OF THE CONTENTS OF THE CONTRACT  
22 BETWEEN PHILADELPHIA AND ES&S?

23 A. NO.

24 Q. OKAY. SO IF A WITNESS FROM THE CITY OF  
25 PHILADELPHIA WHEN THIS HEARING RESUMES LATER THIS WEEK

1 TESTIFIES AS TO HIS OR HER UNDERSTANDING OF THE TERMS OF  
2 THAT CONTRACT, AND IN PARTICULAR WHO IS RESPONSIBLE FOR  
3 REPLACING THE MACHINES IF THEY GET DECERTIFIED, YOU  
4 WOULD BE IN NO POSITION TO DISPUTE THAT, RIGHT?

5 MR. WIYGUL: OBJECTION.

6 THE COURT: I WILL OVERRULE THAT.

7 THE WITNESS: YEAH, I DO -- I AM NOT  
8 FAMILIAR WITH THE TERMS, AND IF I WERE, I DON'T KNOW  
9 THAT I COULD MAKE A LEGAL OPINION ON SOMETHING LIKE  
10 THAT. THAT'S -- I AM NOT A LAWYER.

11 BY MR. LIEB:

12 Q. JUST TO BE CLEAR, DO YOU HAVE ANY KNOWLEDGE AS  
13 TO WHETHER ES&S OR PHILADELPHIA IS RESPONSIBLE FOR  
14 REPLACING THE MACHINES IF THEY GET DECERTIFIED?

15 A. I DON'T HAVE THAT INFORMATION.

16 Q. DO YOU HAVE ANY KNOWLEDGE AS TO WHO BEARS THE  
17 COST OF REPLACING THESE MACHINES IF THEY GET  
18 DECERTIFIED?

19 A. I DO NOT.

20 Q. OKAY. YOU WERE ASKED SOME QUESTIONS ON DIRECT  
21 EXAMINATION ABOUT ES&S' PROMOTIONAL MATERIALS THAT DID  
22 NOT USE THE PHRASE "PAPER BALLOT" IN DESCRIBING THE  
23 PIECE OF PAPER ASSOCIATED WITH THE EXPRESSVOTE XL. DO  
24 YOU RECALL THAT TESTIMONY?

25 A. I THINK SO, YES.



1 Q. THERE SHOULD BE A BINDER OF PLAINTIFFS' EXHIBITS  
2 IN FRONT -- ONE OF THE THREE BINDERS IN FRONT OF YOU IS  
3 PLAINTIFFS' EXHIBITS.

4 A. YES.

5 Q. CAN YOU PLEASE TURN BRIEFLY TO TABS 12 AND 13 OF  
6 THOSE -- WELL, TURN BRIEFLY TO TAB 13 OF THAT BINDER.

7 A. WHAT I SEE HERE IS A --

8 Q. LET ME ASK YOU A QUESTION. YOU RECOGNIZE THIS  
9 DOCUMENT TO BE PROMOTIONAL MATERIALS PREPARED BY ES&S  
10 FOR THIS SYSTEM THAT YOU ARE THE PRODUCT MANAGER FOR,  
11 RIGHT?

12 A. YES.

13 Q. AND IN VARIOUS PLACES ON THIS DOCUMENT, THE  
14 PIECE OF PAPER IN QUESTION IS REFERRED TO AS A "PAPER  
15 CARD" AND A "SUMMARY CARD," RIGHT?

16 A. LET'S TAKE A LOOK.

17 THE COURT: THAT'S RIGHT, MR. LIEB.

18 BY MR. LIEB:

19 Q. AND YOU WERE ASKED BY COUNSEL WHY ES&S DID NOT  
20 USE THE WORD "PAPER BALLOT" IN THESE MATERIALS. DO YOU  
21 RECALL THAT TESTIMONY?

22 A. YES.

23 Q. AND YOU SAID THAT BASICALLY YOU ARE TRYING TO  
24 OFFEND THE LEAST NUMBER OF PEOPLE POSSIBLE, RIGHT?

25 A. WE CAN USE GENERIC TERMS AT TIMES, YES.

1 Q. YOU ARE USING SORT OF LOWEST COMMON DENOMINATOR  
2 LANGUAGE, RIGHT?

3 A. YES, SOMETIMES.

4 Q. THE COMMON MEANING OF THE WORD, RIGHT?

5 A. NO, NOT NECESSARILY COMMON -- NOT ALWAYS THE  
6 COMMON MEANING OF THE WORD.

7 Q. WHEN YOU SAY YOU ARE USING THE LOWEST COMMON  
8 DENOMINATOR TERM THAT IS GOING TO OFFEND THE LEAST  
9 NUMBER OF PEOPLE, THAT MEANS THE WORD THAT MOST -- MOST  
10 PEOPLE ARE SUPPOSED TO UNDERSTAND WHAT YOU ARE TALKING  
11 ABOUT, RIGHT?

12 A. YEAH. IT'S AGAIN -- IT'S GOING TO DEPEND ON  
13 MARKETS.

14 Q. THAT'S THE WORD THAT YOU FELT, BASED ON YOUR  
15 KNOWLEDGE OF THE MARKET, MADE THE MOST SENSE.

16 A. I HAVE SOME INPUT TO THESE. BUT OUR MARKETING  
17 DEPARTMENT AND OUR GOVERNMENT RELATIONS FOLKS HAVE A LOT  
18 OF THE FINAL SAY. OUR EXECUTIVE TEAM DOES, AND I  
19 GENERALLY INDICATE MY FEELINGS TOWARDS THEM AND CHECK  
20 THEM FOR TECHNICAL CONTENT.

21 Q. AS FAR AS YOU KNOW, ES&S USED THAT LANGUAGE IN  
22 THIS DOCUMENT BASED ON ITS KNOWLEDGE OF WHAT THE MARKET  
23 WOULD WANT, RIGHT?

24 MR. WIYGUL: OBJECTION.

25 THE COURT: NO, I WILL LET HIM ANSWER.

1 THE WITNESS: YEAH, PROBABLY.

2 THE COURT: MR. LIEB, DID YOU EVER HEAR  
3 OF LAW STUDENTS WHO HAD DIFFERENT RESUMES DEPENDING ON  
4 WHICH POTENTIAL EMPLOYER THEY WERE SENDING THEM TO?

5 MR. LIEB: NO, ACTUALLY, IF YOU ARE  
6 ASKING ME.

7 THE COURT: REALLY? THEY DIDN'T DO THAT  
8 WHEN YOU WENT TO LAW SCHOOL?

9 MR. LIEB: I GUESS I DIDN'T REALLY ASK  
10 PEOPLE.

11 THE COURT: IF YOU'RE APPLYING TO A BIG  
12 CORPORATION, YOU MIGHT EMPHASIZE ONE THING IN YOUR  
13 RESUME. IF YOU ARE APPLYING TO LEGAL AID, YOU MIGHT  
14 EMPHASIZE ANOTHER?

15 MR. LIEB: YOUR HONOR, I TAKE THE POINT  
16 THAT PEOPLE USE DIFFERENT LANGUAGE FOR DIFFERENT  
17 AUDIENCES.

18 THE COURT: I GUESS THINGS HAVE CHANGED.  
19 IT'S BEEN A LONG TIME SINCE I WAS IN LAW SCHOOL.

20 GO AHEAD.

21 BY MR. LIEB:

22 Q. BY THE WAY, THE BARREL KEYS, ARE THOSE UNIQUE  
23 KEYS FOR EACH MACHINE?

24 A. THEY CAN BE. IT'S A CUSTOMER PREFERENCE.

25 Q. SO IN SOME JURISDICTIONS THEY MAY BE AND IN SOME

1 JURISDICTIONS THEY MAY NOT.

2 A. CORRECT.

3 THE COURT: DO YOU KNOW WHAT PHILADELPHIA  
4 DOES?

5 THE WITNESS: I DON'T.

6 THE COURT: OKAY.

7 BY MR. LIEB:

8 Q. ES&S --

9 THE WITNESS: BUT THE PHILADELPHIA  
10 GENTLEMAN --

11 BY MR. LIEB:

12 Q. ES&S HAS NO REQUIREMENT EITHER WAY.

13 A. CORRECT.

14 Q. WHILE WE WERE DOING THE DEMO, YOU SAID, PERHAPS  
15 SOMEWHAT IN JEST, THAT ES&S WOULD DO ANYTHING FOR MONEY,  
16 RIGHT?

17 A. IN JEST, YES. AND ACTUALLY WE WON'T. THERE ARE  
18 CERTAIN THINGS WE WILL NOT EVEN DO FOR MONEY.

19 Q. BUT NOT THAT WAY.

20 A. WE ARE A VERY FOCUSED BUSINESS. AND EVEN WITHIN  
21 THE ELECTION BUSINESS, THERE ARE CERTAIN TYPES OF THINGS  
22 THAT WE JUST DON'T HAVE THE EXPERTISE OR ARE NOT  
23 SOMETHING WE WANT TO GET INVOLVED IN. SO WHEN -- THE  
24 EXAMPLE WAS THE POLL WORKER TRAINING. THAT IS -- WE  
25 ALMOST HAVE TO HAVE A WHOLE SECTION OF THE COMPANY TO BE

1 ABLE TO SUPPORT THAT, SO VOTER VIDEOS, THINGS LIKE THAT,  
2 THERE ARE A NUMBER OF THINGS WITHIN EVEN IN THE ELECTION  
3 SPACE THAT WE JUST DON'T DO.

4 Q. YOU ARE A FOR-PROFIT BUSINESS, YES?

5 A. WE ARE.

6 Q. AND MAKING AND SELLING VOTING MACHINES IS YOUR  
7 ENTIRE BUSINESS, RIGHT?

8 A. VOTING RELATED THINGS, YES.

9 Q. VOTING SYSTEMS?

10 A. YES.

11 Q. AND IF THE COURT WERE TO ORDER THE  
12 DECERTIFICATION OF THE XL, THAT WOULD MEAN IT COULD NOT  
13 BE USED ANYWHERE IN PENNSYLVANIA, RIGHT?

14 A. I AM ASSUMING -- THAT'S MY UNDERSTANDING.

15 Q. AND THE CONTRACT WITH THE CITY OF PHILADELPHIA  
16 IS FOR ABOUT \$28.9 MILLION?

17 A. I DON'T KNOW IF I KNOW THAT ANSWER.

18 Q. FAIR TO SAY THAT AT LEAST TENS OF MILLIONS OF  
19 DOLLARS FOR ES&S RIDING ON THE OUTCOME OF THE COURT'S  
20 DECISION?

21 A. DEPENDING ON SOME OF THE QUESTIONS YOU ASKED  
22 ABOUT WHO PAYS FOR WHAT AND WHO HAS TO PAY THE  
23 REPLACEMENT COST. SO I DON'T KNOW THOSE DETAILS, SO I  
24 CAN'T ANSWER THAT QUESTION.

25 Q. NONETHELESS, DECERTIFICATION OF THE MACHINE BY

1 THE COMMONWEALTH OF PENNSYLVANIA WOULD NOT BE GOOD FOR  
2 FUTURE BUSINESS WITH OTHER JURISDICTIONS, RIGHT?

3 A. I WOULD SAY THAT'S A FAIR STATEMENT.

4 Q. NOT GOOD FOR THE REPUTATION OF THE MACHINE OR  
5 THE COMPANY, RIGHT?

6 A. RIGHT.

7 MR. LIEB: I HAVE NOTHING FURTHER.

8 MR. WIYGUL: VERY BRIEF REDIRECT, YOUR  
9 HONOR.

10 THE COURT: OKAY.

11 REDIRECT EXAMINATION

12 BY MR. WIYGUL:

13 Q. MR. BAUMERT, IF WE LOOKED AT PLAINTIFFS'  
14 EXHIBIT 1013, THAT WAS THE PROMOTIONAL MATERIAL.

15 A. YES.

16 Q. DO YOU SEE THAT THE PAPER RECORDS PRODUCED BY  
17 THE XL MACHINE ARE ALSO REFERRED TO AS  
18 "VOTER-VERIFIABLE" OR A "VOTER-VERIFIABLE PAPER RECORD,"  
19 TOP RIGHT?

20 A. SO THAT -- 13, SORRY. VOTER-VERIFIABLE PAPER  
21 RECORD, CORRECT.

22 Q. AND IT'S ALSO -- THAT DESCRIPTION IS ALSO USED  
23 ON THE SECOND PAGE, LAST SENTENCE, THE GRAY AREA?

24 A. AND IT'S ALSO A HEADING. SO YES, IN THE GRAY  
25 AREA AND THE HEADING SAYS "VERIFIABLE PAPER RECORD."

1 Q. AND I COULD REFER YOU TO PARAGRAPH 2 B OF THE  
2 SETTLEMENT AGREEMENT. I WON'T DO THAT.

3 LET ME ASK YOU ABOUT THE TESTING. MR.  
4 LIEB ASKED YOU SOME QUESTIONS ABOUT THE AUDITING OF  
5 ELECTIONS USING THE XL.

6 A. YES.

7 Q. HE ASKED YOU ABOUT TESTS OTHER THAN THAT. AND  
8 WE TALKED ABOUT THAT A LITTLE BIT IN YOUR DIRECT. ARE  
9 YOU AWARE OF THE REEXAMINATION OF THE XL THAT  
10 PENNSYLVANIA CONSULTANTS PERFORMED IN 2019?

11 A. I AM AWARE. YES, I AM AWARE OF THAT  
12 REEXAMINATION.

13 Q. DO YOU KNOW WHETHER AS PART OF THAT  
14 REEXAMINATION PETITION THE SPECIFIC PRINthead ISSUE THAT  
15 WE HAVE BEEN DISCUSSING WAS TESTED FOR?

16 A. MY UNDERSTANDING WAS THAT IT WAS.

17 Q. AND DO YOU HAVE AN UNDERSTANDING OF WHAT THE  
18 OUTCOME OF THAT TEST WAS?

19 A. THAT THEY WERE ABLE TO VERIFY THAT THE PRINthead  
20 DID LIFT AND LOWER AT THE APPROPRIATE TIMES, AS WE  
21 CONTESTED -- AS WE INDICATED.

22 MR. WIYGUL: AND JUST FOR THE RECORD,  
23 YOUR HONOR, I REFER TO EXHIBIT JX 45, WHICH IS ALREADY  
24 IN EVIDENCE. THAT'S THE REEXAMINATION PETITION AND  
25 PAGES 5 THROUGH 9 OF THAT THAT WE DISCUSSED.

1 NO FURTHER QUESTIONS. THANK YOU.

2 THE COURT: THANK YOU, SIR.

3 THE WITNESS: THANK YOU, YOUR HONOR.

4 (WITNESS EXCUSED.)

5 MR. ARONCHICK: MS. KOTULA IS WAITING, IF  
6 THAT'S OKAY.

7 THE COURT: OKAY. I WILL -- PLACE THE  
8 CALL. HERE I AM. I WOULD JUST LIKE TO MAKE SURE THAT  
9 THE STENOGRAPHER IS CLOSE ENOUGH TO THE SPEAKER THAT SHE  
10 CAN HEAR HER.

11 OH, OKAY. WE HAVE TO TAKE IT IN  
12 CHAMBERS, AND TRANSFER IT HERE.

13 (DISCUSSION OFF THE RECORD.)

14 THE COURT: OKAY. WE ARE BACK ON THE  
15 RECORD. I BLUSH TO SAY I CAN'T REMEMBER, WERE YOU IN  
16 THE MIDDLE OF YOUR -- YOU WERE. OKAY. OKAY.

17 MR. WIYGUL, WHY DON'T YOU CONTINUE YOUR  
18 EXAMINATION OF THIS WITNESS.

19 MS. KOTULA, YOU ARE STILL UNDER OATH.

20 THE WITNESS: YES.

21 (KATHLEEN KOTULA, HAVING BEEN PREVIOUSLY  
22 SWORN, TESTIFIED AS FOLLOWS.)

23 THE COURT: OKAY.

24 CROSS-EXAMINATION (CONT.)

25 BY MR. WIYGUL:



1 Q. MS. KOTULA, CAN YOU HEAR ME?

2 A. YES, I CAN.

3 Q. LET ME KNOW IF FOR ANY REASON I FADE OUT AND I  
4 WILL TRY TO IMPROVE.

5 I BELIEVE WHEN WE LEFT OFF YESTERDAY, YOU  
6 HAD GIVEN SOME TESTIMONY ABOUT THE VIDEO, THE ISSUE OF  
7 THE VIDEO SOUGHT BY PLAINTIFFS AND DR. HALDERMAN. DO  
8 YOU REMEMBER THAT?

9 A. YES.

10 Q. AND IT'S BEEN ESTABLISHED THE FIRST TIME THAT  
11 PLAINTIFFS COMPLAINED TO DEFENDANTS ABOUT THE  
12 EXPRESSVOTE XL MACHINE WAS A LETTER DATED JULY 29, 2019.  
13 DID YOU SEE A COPY OF THE LETTER ON OR AROUND THAT DATE?

14 A. YES.

15 Q. AND DID DEFENDANTS -- EXCUSE ME. DID PLAINTIFFS  
16 MENTION ANYTHING ABOUT VIDEOS IN THAT LETTER?

17 A. NOT THAT I RECALL.

18 Q. OKAY. AND THEN THERE WAS A FOLLOW-UP LETTER, A  
19 LATER LETTER BY PLAINTIFFS, DATED OCTOBER 1ST, 2019,  
20 WHICH ALSO RAISED COMPLAINTS ABOUT THE EXPRESSVOTE XL  
21 MACHINE. DID YOU SEE A COPY OF THAT LETTER ON OR ABOUT  
22 THE DATE IT WAS SENT?

23 A. YES.

24 Q. AND DID THAT LETTER MAKE ANY REFERENCE TO  
25 VIDEOS?

1 A. FOR THE ES&S SYSTEM?

2 Q. CORRECT.

3 A. NO.

4 Q. TO THE BEST OF YOUR RECOLLECTION, WHEN IS THE  
5 FIRST TIME THAT PLAINTIFFS IN THIS CASE MENTIONED THE  
6 ISSUE OF THE ES&S VIDEO?

7 A. THE FIRST TIME THAT THEY MENTIONED THE ISSUE OF  
8 THE VIDEO, AS IT RELATED TO THE ES&S SYSTEM, WAS AFTER  
9 THE FILINGS IN THIS CASE, AFTER WE FILED OUR RESPONSE.

10 Q. AFTER DEFENDANTS FILED THEIR RESPONSE?

11 A. CORRECT.

12 Q. DO YOU HAVE A COPY OF THE JOINT EXHIBIT BINDER  
13 WITH YOU, MS. KOTULA?

14 A. I DO.

15 Q. COULD YOU TURN TO JOINT EXHIBIT 14, PLEASE.

16 A. YES.

17 Q. THIS IT'S BEEN ESTABLISHED IS AN E-MAIL FROM SUE  
18 ANN UNGER DATED SEPTEMBER 28, 2018 TO PLAINTIFFS'  
19 COUNSEL. DID YOU SEE A COPY OF THIS E-MAIL ON OR ABOUT  
20 THAT DATE?

21 A. YES.

22 Q. AND ARE YOU FAMILIAR WITH THIS E-MAIL?

23 A. YES, I AM VERY FAMILIAR WITH IT.

24 Q. HOW ARE YOU FAMILIAR WITH IT?

25 A. I AM FAMILIAR WITH IT BECAUSE I AM THE PERSON

1 THAT PRETTY MUCH DRAFTED THE E-MAIL FOR MS. UNGER.

2 Q. AND THE FIRST SENTENCE THERE THAT SAYS, I'M  
3 FORWARDING SOME DOCUMENTS THAT WE'RE HOPING TO FAVORABLY  
4 INFLUENCE SETTLEMENT DISCUSSIONS. DID YOU DRAFT THAT  
5 SENTENCE?

6 A. I DID.

7 Q. AND WHAT WAS YOUR PURPOSE IN DRAFTING THAT  
8 SENTENCE? WHAT WERE YOU TRYING TO COMMUNICATE?

9 A. SO WHAT I WAS TRYING TO COMMUNICATE ON BEHALF OF  
10 MY CLIENT AGAIN WAS, WE WANTED TO PROVIDE INFORMATION TO  
11 THE PLAINTIFFS TO SHOW THEM THAT WE WERE MOVING IN  
12 PENNSYLVANIA TO VOTING SYSTEMS THAT HAD HAD A PAPER  
13 RECORD. THE WHOLE BASIS OF THEIR COMPLAINT WAS ABOUT  
14 THE DRE'S THAT WERE IN USE, WHY ARE THEY IN USE IN  
15 PENNSYLVANIA THAT WERE PAPERLESS DRE'S. AND SO WE  
16 WANTED TO ESTABLISH TO THEM THAT WE WERE MOVING IN THE  
17 DIRECTION THAT ESSENTIALLY THEY WERE SEEKING IN THE  
18 LITIGATION.

19 Q. AND COULD YOU TURN TO JX 20, PLEASE, WHICH HAS  
20 BEEN ESTABLISHED IS AN E-MAIL FROM MR. MAAZEL TO SUE ANN  
21 UNGER AND OTHERS, DATED OCTOBER 9TH, 2018.

22 A. YES.

23 Q. ARE YOU THERE?

24 A. YES.

25 Q. DID YOU SEE THIS E-MAIL ON OR AROUND THE DATE

1 AND TIME IT WAS SENT?

2 A. YES. I SAW IT SHORTLY AFTER IT CAME INTO MS.  
3 UNGER.

4 Q. SHORTLY AFTER, MEANING THAT SAME DAY?

5 A. YES, THAT SAME DAY, CORRECT.

6 Q. WHAT WAS -- FROM YOUR PERSPECTIVE, WHAT WAS THE  
7 SIGNIFICANCE OF THIS E-MAIL AT THE TIME?

8 A. SO THE SIGNIFICANCE OF THIS E-MAIL AT THE TIME  
9 WE HAD PREVIOUSLY OBVIOUSLY IN THE SEPTEMBER 28TH  
10 E-MAIL, ONE OF THE THINGS THAT WE HAD PROVIDED WAS THE  
11 STATUS REPORT THAT WE DISCUSSED YESTERDAY. AND SO THIS  
12 E-MAIL -- IN THE INTERIM THERE WAS ALSO A TELEPHONE  
13 CALL, TOUCH BASE, WHERE MR. MAAZEL HAD LET US KNOW THEIR  
14 EXPERT WAS LOOKING AT THE SYSTEMS THAT WE HAD PROVIDED  
15 AND THEY WOULD PROVIDE SOME FEEDBACK -- THAT HE WOULD  
16 PROVIDE SOME FEEDBACK ON WHAT WE HAD SENT OVER, AND THIS  
17 E-MAIL REPRESENTED THE FEEDBACK THAT CAME BACK REGARDING  
18 THE SYSTEM.

19 Q. AND THIS E-MAIL PROVIDED FEEDBACK ON WHAT DR.  
20 HALDERMAN DESCRIBES AS THE ES&S EXPRESSVOTE MACHINE,  
21 ALONG OTHERS, CORRECT?

22 A. THAT'S CORRECT.

23 Q. AND WHAT CONCLUSIONS DID YOU DRAW, IF ANY, FROM  
24 THIS E-MAIL REGARDING THE STATE OF THE SETTLEMENT  
25 DISCUSSIONS?

1 A. WELL, THE CONCLUSION THAT WE DREW IS THAT IT  
2 SAYS THAT HE DOESN'T DISAPPROVE OF ANY OF THE SYSTEMS IN  
3 THEIR ENTIRETY. AND SO WHEN HE TALKS ABOUT THE ES&S  
4 EXPRESSVOTE, AGAIN, HE IS NOT DISAPPROVING OF IT. HE IS  
5 MENTIONING SOME POSSIBLE CONDITIONS ON IT, BUT IT'S NOT  
6 A DISAPPROVAL OF THE SYSTEM.

7 Q. AND WHEN DR. HALDERMAN REFERRED TO THE ES&S  
8 EXPRESSVOTE MACHINES, WHAT SPECIFICALLY DID YOU  
9 UNDERSTAND HIM TO BE REFERRING TO?

10 A. WE UNDERSTOOD THAT TO COVER THE DIFFERENT -- THE  
11 DIFFERENT PRODUCTS THAT WERE WITHIN THAT ES&S SUITE.

12 Q. AND WAS THE EXPRESSVOTE XL ONE OF THOSE  
13 PRODUCTS?

14 A. THAT'S CORRECT.

15 Q. IN THIS E-MAIL BOTH MR. MAAZEL AND DR. HALDERMAN  
16 USE THE TERM "PAPER BALLOT." DO YOU SEE THAT?

17 A. I DO.

18 Q. WHAT, IF ANYTHING, DID YOU UNDERSTAND THEM TO  
19 MEAN BY THAT TERM?

20 A. SO WHAT I UNDERSTOOD TO MEAN BY THAT TERM IS IT  
21 WAS BEING USED IN THE CONTEXT OF -- IT WAS IN THE FIRST  
22 PARAGRAPH THAT WAS FROM MR. MAAZEL WHERE HE TALKS  
23 ABOUT -- YOU KNOW, THE BIG POINT WAS ABOUT THAT THERE  
24 ARE PAPERLESS DRE'S WITHIN SOME OF THE VENDOR SUITES OF  
25 PRODUCTS. SO THE USE OF "PAPER BALLOT" WAS IN THE

1       CONTEXT OF THE PAPER DRE CONCERNS.   AND THAT IN FACT IS  
2       TRUE.   THE HART DOES HAVE A PAPERLESS DRE IN THEIR  
3       SUITES OF PRODUCTS, AS WELL AS I BELIEVE ES&S AND  
4       DOMINION.

5       Q.       DID YOU HAVE AN UNDERSTANDING FROM THIS E-MAIL  
6       AS TO WHETHER DR. HALDERMAN WAS USING THE TERM "PAPER  
7       BALLOT" IN A WAY THAT WOULD INCLUDE THE PAPER RECORD  
8       PRODUCED BY THE EXPRESSVOTE XL?

9       A.       YES.   I UNDERSTOOD THAT THE "PAPER BALLOT" TERM  
10      WAS BEING USED TO ESSENTIALLY, LIKE I SAID, COVER  
11      ANYTHING THAT WAS NOT A PAPER DRE, WHICH WOULD INCLUDE  
12      THE XL.

13      Q.       MR. MAAZEL SAYS, AND I THINK YOU MAY HAVE JUST  
14      ALLUDED TO THIS, IN THE E-MAIL HE SAID THAT HE WAS TOLD  
15      THAT THE HART INTERCIVIC VERITY VOTING SYSTEMS, ONE OF  
16      THE SYSTEMS ON THE VOTING SYSTEM STATUS REPORT THAT WAS  
17      ATTACHED TO MS. UNGER'S SEPTEMBER 21ST E-MAIL, THAT THAT  
18      SYSTEM CONTAINED SOMETHING CALLED THE VERITY VOTING  
19      TOUCH, A PAPERLESS DRE SYSTEM.   DO YOU SEE THAT?

20      A.       I DO.

21      Q.       DID THE DEPARTMENT CONSIDER THE VERITY VOTING  
22      TOUCH FOR CERTIFICATION?

23      A.       WE DIDN'T CONSIDER ANY DRE'S.   THERE WERE -- I  
24      CAN'T REMEMBER IF HART EVEN APPROACHED US ABOUT IT.   I  
25      KNOW THERE WAS AT LEAST ONE VENDOR, AND I AM NOT GOING

1 TO MENTION WHO IT WAS -- THERE WAS AT LEAST ONE VENDOR  
2 THAT DID APPROACH US WITH A DRE, AND THEY WERE TOLD IN  
3 NO UNCERTAIN TERMS THAT DO NOT BRING ANY DRE'S TO  
4 PENNSYLVANIA.

5 Q. NOW, WERE YOU IN REGULAR CONTACT WITH PLAINTIFFS  
6 OR THEIR COUNSEL DURING THE SETTLEMENT DISCUSSIONS?

7 A. YES. I MEAN, WE HAD -- WE HAD TOUCHED BASE VIA  
8 TELEPHONE AND THE E-MAIL EXCHANGES.

9 Q. AND TO YOUR KNOWLEDGE WERE YOU ON ALL THE  
10 TELEPHONE CALLS THAT TOOK PLACE BETWEEN THE PARTIES  
11 DURING THE SETTLEMENT DISCUSSION PERIOD?

12 A. YES. AS FAR AS I KNOW, I WAS PRIVY TO ALL OF  
13 THAT. I BELIEVE THE ONLY THING THAT I WASN'T INVOLVED  
14 OR DIDN'T ATTEND WAS MAYBE THE CASE MANAGEMENT  
15 CONFERENCE ON SEPTEMBER 14TH OF 2018.

16 Q. AND TO YOUR KNOWLEDGE DID YOU SEE ALL OF THE  
17 E-MAILS OR OTHER WRITTEN CORRESPONDENCE THAT WAS  
18 EXCHANGED BETWEEN THE PARTIES AS PART OF THE SETTLEMENT  
19 COMMUNICATION PROCESS?

20 A. YES.

21 Q. WERE YOU PRESENT AT THE SETTLEMENT CONFERENCE ON  
22 OCTOBER 11TH?

23 A. I WAS.

24 Q. DURING THE ENTIRE PERIOD OF THE SETTLEMENT  
25 NEGOTIATIONS UP TO WHEN THE AGREEMENT WAS SIGNED ON

1 NOVEMBER 28, 2018, DID DR. HALDERMAN OR MR. MAAZEL OR  
2 ANY OTHER REPRESENTATIVE OF PLAINTIFFS EVER SUGGEST THAT  
3 BALLOT-MARKING DEVICES WERE UNACCEPTABLE AND ONLY THE  
4 HAND-MARKED PAPER BALLOTS SHOULD BE CERTIFIED?

5 A. NO.

6 Q. AT ANY POINT DURING THE SETTLEMENT DISCUSSIONS  
7 DID ANY OF THOSE FOLKS THAT I JUST DESCRIBED, ANY  
8 REPRESENTATIVE OF PLAINTIFF, EVER SUGGEST THAT VOTING  
9 SYSTEMS THAT SCAN BARCODES TO TABULATE THE VOTES WERE  
10 UNACCEPTABLE?

11 A. NO.

12 Q. DID ANY PLAINTIFFS' REPRESENTATIVE AT ANY POINT  
13 DURING THE SETTLEMENT DISCUSSIONS EVER SUGGEST THAT  
14 PAPER RECORDS THAT DID NOT REPRODUCE THE ENTIRE MENU OF  
15 CANDIDATE OPTIONS WERE UNACCEPTABLE OR SHOULD NOT BE  
16 CONSIDERED PAPER BALLOTS?

17 A. NO.

18 MR. WIYGUL: THANK YOU. NOTHING FURTHER.

19 THE COURT: MR. MAAZEL.

20 MR. MAAZEL: CAN I JUST GO TO THE PODIUM.  
21 IT'S EASIER TO HEAR.

22 THE COURT: SURE. WHATEVER YOU WANT.

23 REDIRECT EXAMINATION

24 BY MR. MAAZEL:

25 Q. GOOD AFTERNOON, MS. KOTULA. CAN YOU HEAR ME?



1 IT'S ILANN MAAZEL AGAIN.

2 A. YES, I CAN HEAR YOU. THANK YOU.

3 Q. YOU MENTIONED SOMETHING IN THE QUESTIONING BY  
4 COUNSEL ABOUT PLAINTIFFS NOT BEING ENTITLED TO VIDEOS.  
5 DO YOU REMEMBER THAT QUESTIONING?

6 A. YES.

7 Q. DID YOU EVER TELL DR. HALDERMAN YOUR VIEW UNDER  
8 THE SETTLEMENT AGREEMENT THAT YOU DID NOT HAVE TO  
9 PRODUCE VIDEOS?

10 A. NO. I DON'T THINK I EVER COMMUNICATED THAT TO  
11 DR. HALDERMAN.

12 Q. YOU NEVER COMMUNICATED THAT TO ANYONE ON THE  
13 PLAINTIFFS' SIDE, IS THAT RIGHT?

14 A. NOT THAT I AM AWARE OF.

15 Q. YOU ARE NOT AWARE OF ANYONE ELSE, ANY OF YOUR  
16 COLLEAGUES WHO EVER SAID TO PLAINTIFFS THEY ARE NOT  
17 ENTITLED TO VIDEOS IN THE SETTLEMENT AGREEMENT, CORRECT?

18 A. I DO BELIEVE WHEN YOU SENT ONE OF THE  
19 NONCOMPLIANCE -- I CAN'T REMEMBER IF IT'S THE FIRST OR  
20 THE SECOND ONE, YOU WERE ASKING ABOUT VIDEOS THERE, AND  
21 I DO THINK THAT WE DID KIND OF HAVE AN EXCHANGE IN THE  
22 LETTERS ABOUT OUR POSITION ON VIDEOS AT THAT TIME.

23 Q. IN THE MEET AND CONFER LETTERS YOU ARE REFERRING  
24 TO?

25 A. YES. I THOUGHT THERE WAS SOMETHING IN ONE OF

1 THE RESPONSES THAT WENT BACK THAT WE INDICATED ABOUT THE  
2 VIDEOS.

3 Q. IN FACT, THERE WAS A PRACTICE OF PROVIDING  
4 VIDEOS THAT YOU INITIATED, ISN'T THAT RIGHT?

5 A. WELL, AS I RECALL YESTERDAY, THERE WAS -- THE  
6 CLEARBALLOT EXAMINATION AS WE DISCUSSED YESTERDAY THE  
7 CLEARBALLOT EXAMINATION THAT OCCURRED IN BETWEEN THAT  
8 TIME PERIOD RIGHT BEFORE THE SETTLEMENT AGREEMENT, WE  
9 MADE DR. HALDERMAN AWARE WE TALKED ABOUT VIDEOS.

10 Q. AND IT WAS ACTUALLY YOUR SUGGESTION TO PROVIDE  
11 DR. HALDERMAN VIDEOS, CORRECT?

12 A. I DON'T RECALL IT WAS MY SUGGESTION. I KNOW IT  
13 WAS IN THE E-MAIL, BUT I CAN'T REMEMBER IF -- YOU KNOW,  
14 IF WE -- I KNOW THERE IS A PHONE CALL THAT PROCEEDED  
15 THAT E-MAIL EXCHANGE, AND I DON'T KNOW IF IT CAME UP IN  
16 THAT PHONE CALL.

17 Q. DO YOU HAVE ACCESS TO ANY OF THE EXHIBITS, MS.  
18 KOTULA, WHERE YOU ARE?

19 A. YES. I HAVE THE JOINT EXHIBITS, AND I HAVE  
20 PLAINTIFFS' AND I HAVE THE STIPULATIONS.

21 Q. AND IF YOU LOOK AT PAGE 6 OF PLAINTIFFS' EXHIBIT  
22 1001, WHICH IS TAB 1 OF THE PLAINTIFFS' BINDER.

23 A. OKAY. I AM AT TAB 1.

24 Q. AND IF YOU TURN TO PAGE 3, YOU WILL SEE AN  
25 E-MAIL YOU WROTE ON OCTOBER 26, 2018.

1 A. OKAY. YES, I SEE -- WHAT WAS THE DATE OF THAT?

2 Q. OCTOBER 26, 2018.

3 A. I SEE THAT.

4 Q. AND THAT E-MAIL CONTINUES ON PAGE 6 OF THIS

5 EXHIBIT.

6 A. YES.

7 Q. AND THIS IS AN E-MAIL FROM YOU TO DR. HALDERMAN,

8 YES?

9 A. IT IS.

10 Q. AND YOU SAID: PLEASE LET ME KNOW IF YOU PLAN TO

11 ATTEND IN PERSON. OTHERWISE WE CAN DISCUSS ARRANGEMENTS

12 REGARDING THE VIDEO RECORDING AT THE EXAMINATION. YES?

13 A. THAT'S CORRECT.

14 Q. YOU WERE ACTUALLY THE PERSON WHO -- THE VERY

15 FIRST PERSON TO SUGGEST THAT YOU CAN PRODUCE VIDEOS IN

16 LIEU OF AN IN-PERSON EXAMINATION, RIGHT?

17 A. IN THIS E-MAIL, LIKE I SAID, I BELIEVE THERE WAS

18 A PHONE CALL THE DAY BEFORE OR THAT DAY. I CAN'T

19 REMEMBER WHAT WAS DISCUSSED IN THAT PHONE CALL, IF DR.

20 HALDERMAN HAD RAISED IT OR -- BUT IN THIS E-MAIL, YES.

21 Q. AND THIS E-MAIL YOU SENT BEFORE THE SETTLEMENT

22 AGREEMENT WAS EVEN SIGNED, YES?

23 A. YES.

24 Q. AND YOU ATTENDED THE SETTLEMENT CONFERENCE, YES?

25 A. I DID, YES.

1 Q. AND YOU NEVER TOLD ANYONE FROM THE PLAINTIFFS'  
2 SIDE EVER BEFORE THE SETTLEMENT OR IN ALL THE MANY  
3 MONTHS AFTER THE SETTLEMENT WHEN YOU WERE GETTING  
4 REQUESTS FOR VIDEOS, SORRY, BUT YOU ARE NOT ENTITLED TO  
5 THEM?

6 A. WELL, I DON'T REMEMBER VIDEOS COMING UP AT ALL.

7 Q. WELL, YOU RECEIVED TEN DIFFERENT E-MAILS. I  
8 DON'T WANT TO COVER ALL OF THIS AT LENGTH AGAIN, BUT YOU  
9 RECEIVED E-MAILS.

10 THE COURT: AND SHE NEVER RESPONDED TO  
11 ANYONE SAYING YOU ARE NOT ENTITLED TO THEM, IF THAT'S  
12 THE POINT YOU ARE TRYING TO MAKE.

13 MR. MAAZEL: YES.

14 THE COURT: OKAY.

15 BY MR. MAAZEL:

16 Q. YOUR COUNSEL -- COCOUNSEL THAT SAID THAT THE  
17 FIRST TIME YOU EVER HEARD ANY COMPLAINTS ABOUT VIDEOS  
18 WAS AFTER THE MEET AND CONFER PROCESS AGAIN IN  
19 JULY 2019, IS THAT RIGHT?

20 MR. WIYGUL: OBJECTION.

21 THE COURT: I WILL LET HER ANSWER.

22 MR. MAAZEL: I THOUGHT SHE TESTIFIED TO  
23 THAT.

24 THE WITNESS: YES. THE FIRST TIME --  
25 RIGHT, I THINK THE FIRST TIME THAT WE HEARD A COMPLAINT

1 ABOUT THE VIDEOS WAS, IF I RECALL, IN THE -- ONE OF THE  
2 NONCOMPLIANCE LETTERS THERE WAS A COMPLAINT ABOUT -- IT  
3 WASN'T ABOUT THIS. IT WASN'T ABOUT ES&S. IT WAS ABOUT  
4 ANOTHER VENDOR'S VIDEO, TRYING TO GET THOSE VIDEOS.  
5 BY MR. MAAZEL:

6 Q. BUT YOU RECEIVED COMPLAINTS ABOUT NOT GETTING  
7 VIDEOS ON JANUARY 29TH, FEBRUARY 21ST, 26, MARCH 7,  
8 MARCH 28, APRIL 17, MAY 9, MAY 14, MAY 28 AND JUNE 4,  
9 2019. ISN'T THAT TRUE?

10 A. I RECEIVED E-MAILS FROM DR. HALDERMAN.

11 Q. AND FROM ME.

12 A. AND FROM YOU, THAT'S CORRECT.

13 Q. SAYING IN ORDER FOR DR. HALDERMAN TO PARTICIPATE  
14 IN THE -- IN THE MONITORING PROCESS OR THE SETTLEMENT  
15 AGREEMENT YOU NEEDED TO PRODUCE VIDEOS. WE WENT OVER  
16 THAT YESTERDAY, YES?

17 A. WE DID, YES.

18 Q. SO YOU WERE WELL AWARE OF THE VIDEO ISSUE LONG  
19 BEFORE ANY MEET AND CONFER LETTER, CORRECT?

20 A. WELL, I WAS AWARE THAT DR. HALDERMAN WAS SEEKING  
21 THE VIDEOS, AND I WAS AWARE THAT YOU GOT INVOLVED. BUT  
22 I WAS NOT AWARE THERE WAS A POTENTIAL ISSUE REGARDING  
23 THE SETTLEMENT AGREEMENT.

24 Q. MS. KOTULA, DID YOU OR ANYONE FOR DEFENDANTS  
25 EVER INVITE DR. HALDERMAN TO OBSERVE THE CERTIFICATION

1       PROCESS OF THE EVS 6021 SYSTEM?

2       A.           NO. AS I SAID YESTERDAY, THAT EXAMINATION  
3       HAPPENED BEFORE THE SETTLEMENT AGREEMENT.

4       Q.           BUT THE CERTIFICATION HAPPENED AFTER THE  
5       SETTLEMENT AGREEMENT, RIGHT?

6       A.           RIGHT. BUT THE SETTLEMENT AGREEMENT TALKS ABOUT  
7       ON-SITE EXAMINATIONS AND THAT PREDATED THE SETTLEMENT  
8       AGREEMENT.

9                   THE COURT: WE ARE REPEATING OURSELVES,  
10      MR. MAAZEL.

11      BY MR. MAAZEL:

12      Q.           THE POLL BOOK REPORT, WHICH WAS JOINT  
13      EXHIBIT 12, CAN YOU PUT THAT UP IN FRONT OF YOU?

14      A.           YES.

15      Q.           I BELIEVE -- TELL ME WHEN YOU ARE THERE, MS.  
16      KOTULA.

17      A.           I AM THERE.

18      Q.           OKAY. AND I BELIEVE YOU TESTIFIED JUST A FEW  
19      MINUTES AGO THAT IF YOU LOOK AT PAGE 2 OF THE POLL BOOK  
20      REPORT, THERE IS A SYSTEM CALLED HART INTERCIVIC VERITY  
21      VOTING.

22      A.           YES.

23      Q.           THAT'S A DRE PAPERLESS SYSTEM?

24      A.           WELL, WITHIN THAT SUITE, WITHIN THAT VENDOR  
25      SUITE THERE IS A PAPERLESS DRE, IS MY UNDERSTANDING.

1 Q. OKAY.

2 A. IF YOU LOOK ON THE EAC WEBSITE, IT WOULD BE  
3 THERE.

4 Q. AND SO EVERYTHING IN THE SECOND COLUMN, THESE  
5 ARE NOT MODELS OF SYSTEMS. THESE ARE SUITES OF MANY  
6 DIFFERENT MODELS, YES?

7 A. THAT'S CORRECT. AS WE DISCUSSED YESTERDAY  
8 WITHIN OUR SUITE, THERE IS DIFFERENT COMPONENTS.

9 Q. YES. AND SO AT LEAST AS TO THE HART INTERCIVIC  
10 VERITY VOTING, WE NOW KNOW THAT ONLY PART OF THAT SUITE  
11 WAS BEING CONSIDERED BY THE SECRETARY, YES?

12 A. YES. I BELIEVE EVERYTHING EXCEPT FOR THE DRE'S.

13 Q. BUT THERE IS NO WAY ANYONE COULD FIGURE THAT OUT  
14 BY LOOKING AT THE POLL SHEET THAT YOU SENT.

15 A. WELL, THERE IS. THERE IS THE LINK TO THE EAC  
16 WEBSITE THAT HAS THE COMPONENTS LISTED, THE SPECIFIC  
17 COMPONENTS LISTED.

18 Q. MS. KOTULA, IF YOU CAN FOCUS ON MY QUESTION.  
19 THE POLL BOOK EXHIBIT, JX 12, IS INACCURATE, WHAT YOU  
20 SAID, YES?

21 MR. WIYGUL: OBJECTION.

22 THE WITNESS: DID YOU SAY IT WAS  
23 INACCURATE?

24 THE COURT: WAIT. WAIT JUST A MOMENT,

25 MS. KOTULA.

1 WHAT IS THE BASIS OF YOUR OBJECTION?

2 MR. WIYGUL: AS TO FORM, YOUR HONOR. I  
3 DON'T UNDERSTAND WHAT IS BEING ASKED.

4 THE COURT: WHY DON'T YOU REPEAT THE  
5 QUESTION, MR. MAAZEL.

6 MR. MAAZEL: I WILL ASK IT IN A BETTER  
7 WAY OR I WILL TRY TO.

8 THE COURT: OKAY.

9 BY MR. MAAZEL:

10 Q. MS. KOTULA, YOU PROVIDED A POLL SHEET TO THE  
11 PLAINTIFFS THAT INCLUDED A SUITE, BUT IT DIDN'T SHOW  
12 THAT -- AT LEAST ONE MODEL OF THE SUITE WAS NOT UNDER  
13 CONSIDERATION, IS THAT CORRECT?

14 A. IT DID NOT SHOW EVERY SINGLE -- THE ACTUAL SHEET  
15 ITSELF DID NOT SHOW EVERY SINGLE COMPONENT IN THE COLUMN  
16 THAT HAD THE NAME OF THE SYSTEM, BECAUSE, AS I SAID,  
17 THERE IS A LINK TO THE EAC THAT WOULD HAVE ALL OF THE  
18 ACTUAL COMPONENTS.

19 Q. AND SO JX 20, YOU GOT A RESPONSE OR MS. UNGER  
20 GOT A RESPONSE FROM ME TO YOUR E-MAIL, CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND ONE THING THAT THAT RESPONSE SAID IS THAT  
23 YOUR LIST INCLUDED THE HART INTERCIVIC VERITY VOTING --  
24 VERITY TOUCH SYSTEM, RIGHT?

25 A. MM-HMM, YES.



1 Q. WHICH IS A PAPERLESS DRE SYSTEM.

2 A. YES.

3 Q. AND THEN THERE WAS A REQUEST THAT YOUR SIDE  
4 PRODUCE A MORE GRANULAR LIST, WHICH PARTICULAR MACHINES  
5 FOR ELECTION SYSTEMS ARE BEING PROPOSED FOR  
6 CERTIFICATION.

7 A. THAT'S CORRECT.

8 Q. YOU NEVER PROVIDED THAT LIST, DID YOU?

9 A. WE DID NOT BECAUSE ONCE WE WERE ON THE SAME  
10 PAGE, THAT DRE'S WERE NOT GOING TO BE ALLOWED IN  
11 PENNSYLVANIA, AS EVIDENCED BY THE FOOTNOTE IN THE  
12 SETTLEMENT AGREEMENT, THE MACHINE ISSUE JUST SEEMED TO  
13 BE DONE.

14 THE COURT: THIS WAS ALL A REPEAT, MR.  
15 MAAZEL.

16 MR. MAAZEL: TWO SHORT AREAS AND THEN I  
17 AM DONE, YOUR HONOR.

18 THE COURT: OKAY.

19 BY MR. MAAZEL:

20 Q. YOU ARE FAMILIAR WITH THE PENNSYLVANIA ELECTION  
21 CODE, YES?

22 A. I AM.

23 Q. AND IT HAD SOMETHING -- A DEFINITION FOR  
24 SOMETHING CALLED THE "BALLOT CARD" AND A DEFINITION FOR  
25 SOMETHING CALLED A "PAPER BALLOT." YES?

1       A.           WITHIN THE ELECTRONIC VOTING SYSTEM SECTION OF  
2       THE ELECTION CODE, THERE ARE DEFINITIONS FOR THOSE TWO  
3       THINGS.

4       Q.           YES. SO IS THE DOCUMENT PRODUCED BY THE XL  
5       SYSTEM A BALLOT CARD?

6                   MR. WIYGUL: OBJECTION.

7                   THE COURT: OVERRULED. SHE CAN ANSWER.

8                   THE WITNESS: SO THE PIECE OF PAPER THAT  
9       IS PRODUCED BY THE XL, WE DON'T GENERALLY TREAT IT AS A  
10      BALLOT CARD AS DEFINED UNDER THAT SECTION OF THE  
11      ELECTION CODE.

12     BY MR. MAAZEL:

13      Q.           WHAT DO YOU DEFINE IT AS UNDER THE ELECTION  
14      CODE?

15                   MR. WIYGUL: OBJECTION.

16                   THE COURT: OVERRULED.

17                   THE WITNESS: SO UNDER THE ELECTION CODE,  
18      AN ELECTRONIC VOTING SYSTEM -- AN ELECTRONIC VOTING  
19      SYSTEM CAN ALSO BE SOMETHING THAT ELECTRONICALLY  
20      REGISTERS VOTES AND RECORDED ON PAPER, AND THAT'S WHAT  
21      THE XL IS NORMALLY TREATED AS UNDER THE ELECTION CODE.

22     BY MR. MAAZEL:

23      Q.           I GUESS MY QUESTION IS, THE PIECE OF PAPER THAT  
24      THE XL PRODUCES, WHAT IS THAT DOCUMENT IN YOUR VIEW  
25      UNDER THE PENNSYLVANIA ELECTION CODE?

1 A. IT'S NOT ABOUT THE PIECE OF PAPER. IT'S ABOUT  
2 WHAT THE SYSTEM IS, AND WHAT THE SYSTEM IS UNDER THE  
3 ELECTION CODE IS AN ELECTRONIC VOTING SYSTEM THAT FITS  
4 WITHIN THAT DEFINITION, AND AS I SAID, PART OF THAT  
5 DEFINITION IS THAT THE VOTES CAN BE ELECTRONICALLY  
6 REGISTERED AND ON THE XL THEY ARE RECORDED ON THE PAPER.

7 Q. A BALLOT CARD IS DEFINED UNDER THE ELECTION CODE  
8 AS A CARD WHICH IS COMPATIBLE WITH AUTOMATIC TABULATING  
9 EQUIPMENT AND ON WHICH VOTES MAY BE REGISTERED. IS THAT  
10 CORRECT?

11 A. I DON'T HAVE THE ELECTION CODE IN FRONT OF ME,  
12 BUT THAT SOUNDS RIGHT. I DON'T HAVE THE -- I DON'T HAVE  
13 THE EXACT TEXT IN FRONT OF ME.

14 Q. IS THE PIECE OF PAPER GENERATED BY THE XL A CARD  
15 COMPATIBLE WITH AUTOMATIC TABULATING EQUIPMENT?

16 MR. WIYGUL: OBJECTION, YOUR HONOR.

17 THE COURT: OVERRULED.

18 THE WITNESS: AS I SAID, MR. MAAZEL, THE  
19 CARD THAT IS GENERATED BY THE XL, WE DO NOT GENERALLY  
20 TREAT IT AS A BALLOT CARD UNDER THE ELECTION CODE.

21 BY MR. MAAZEL:

22 Q. YOU WERE ASKED ABOUT DISCUSSIONS -- SETTLEMENT  
23 DISCUSSIONS, YES, A MOMENT AGO?

24 A. YES.

25 Q. IN ANY OF THOSE DISCUSSIONS, IN PERSON OR ON THE

1 PHONE, DID YOU EVER SAY THAT ANY OF YOUR SYSTEMS USE  
2 BARCODES?

3 A. CAN YOU REPEAT THAT? I'M SORRY.

4 Q. DID YOU EVER SAY THAT ANY OF YOUR ELECTION  
5 SYSTEMS USE BARCODES?

6 A. I DON'T RECALL THAT COMING UP.

7 Q. DID YOU EVER SAY THAT ANY OF YOUR SYSTEMS USE  
8 SUMMARY CARDS OR VOTE SUMMARY CARDS?

9 A. I DON'T RECALL THAT. MOST OF OUR DISCUSSIONS  
10 SEEM TO BE CENTERED AROUND THE CONCERNS ABOUT PAPERLESS  
11 DRE.

12 Q. DO YOU HAVE ANY RECOLLECTION IN ANY PHONE  
13 CONVERSATION OR THE SETTLEMENT CONFERENCE DISCUSSING ANY  
14 SPECIFIC VOTING SYSTEM?

15 A. SPECIFIC VOTING SYSTEMS? NO. AGAIN, JUST  
16 GENERALLY ABOUT THE CONCERN ABOUT PAPERLESS DRE'S.

17 THE COURT: WE ARE REPEATING OURSELVES,  
18 TRULY.

19 MR. MAAZEL: I AM FINISHED, YOUR HONOR.

20 THE COURT: ANYTHING MORE?

21 MR. WIYGUL: I JUST WANT TO TRY TO CLEAR  
22 UP A PIECE OF CONFUSION I THINK I MAY HAVE INTRODUCED  
23 REGARDING THE DATE ISSUE, YOUR HONOR.

24 THE COURT: OKAY.

25 RECROSS EXAMINATION

1 BY MR. WIYGUL:

2 Q. MS. KOTULA, I ASKED YOU SOME QUESTIONS ABOUT  
3 WHETHER PLAINTIFFS FIRST BROUGHT UP CERTAIN ISSUES  
4 REGARDING THE VIDEOS. DO YOU REMEMBER THAT?

5 A. YES.

6 Q. AND I THINK I MAY HAVE INTRODUCED CONFUSION THE  
7 WAY I PHRASED MY QUESTION BASED ON MR. MAAZEL'S  
8 FOLLOWUP. LET ME SEE IF I CAN CLARIFY BY REPHRASING.

9 DO YOU RECALL THAT PLAINTIFFS FIRST  
10 COMPLAINED ABOUT THE FACT THAT THE XL RECORD USED  
11 BARCODES IN A LETTER DATED JULY 29, 2019?

12 A. YES.

13 Q. OKAY. DID PLAINTIFFS SAY IN THAT LETTER THAT  
14 THEY LEARNED THAT ISSUE THROUGH WATCHING THE VIDEOS THAT  
15 YOU HAD PROVIDED TO DR. HALDERMAN?

16 A. NO.

17 Q. OKAY. AND DO YOU RECALL THAT THEN ON  
18 OCTOBER 1ST -- THAT LETTER IS AT JX 43 OF THE JULY 29TH  
19 LETTER -- AND THEN JX 48, THEY SENT YOU ANOTHER LETTER  
20 RAISING ALLEGED ISSUES WITH THE EXPRESSVOTE XL, DATED  
21 OCTOBER 1ST, 2019?

22 A. AND YOU ARE ASKING ME IF THEY SAID ANYTHING  
23 ABOUT THE VIDEOS IN THAT LETTER?

24 Q. WELL, I HAD NOT, BUT I AM NOW, YES.

25 A. OKAY. NO.

1 Q. AND THEY DIDN'T SAY THAT -- THEY DIDN'T SAY THEY  
2 LEARNED THE BARCODE ISSUE FROM WATCHING THE VIDEOS,  
3 CORRECT?

4 A. THAT'S CORRECT.

5 Q. AND THEN THERE ARE TWO OTHER ISSUES THAT THEY  
6 POINT OUT THAT THEY DON'T BELIEVE THE XL IS A PAPER  
7 BALLOT. DID THEY SAY THEY LEARNED THAT ISSUE BY  
8 WATCHING THE VIDEOS?

9 A. NO.

10 Q. AND THEN THEY TALK ABOUT WHAT WE HAVE BEEN  
11 TALKING ABOUT, THE PRINthead ISSUE IN THIS LETTER. DO  
12 THEY SAY THAT THEY LEARNED THAT ISSUE BY WATCHING THE  
13 VIDEOS?

14 A. NO.

15 Q. ALL RIGHT. AND NOW I KNOW YOU WERE NOT PRIVY TO  
16 TODAY'S PROCEEDING, BUT YOU WERE YESTERDAY, CORRECT?

17 A. YES.

18 Q. AND YOU READ THE BRIEFING IN THIS CASE?

19 A. CAN YOU REPEAT THAT? I'M SORRY.

20 Q. YOU READ THE BRIEFING ON THIS MOTION?

21 A. I DID, YES.

22 Q. OKAY. TO YOUR KNOWLEDGE, HAVE PLAINTIFFS EVER  
23 ASSERTED THAT ANY OF THE THREE DESIGN ISSUES THAT THEY  
24 HIGHLIGHT WITH THE EXPRESSVOTE XL, THAT THEY ONLY  
25 LEARNED ABOUT THOSE BY WATCHING THE VIDEOS THAT YOU

1 PROVIDED DR. HALDERMAN IN JUNE?

2 A. I AM NOT AWARE OF THAT AT ALL. THE FIRST THAT  
3 -- THE FIRST THAT CAME UP WAS IN THE -- THERE IS NOTHING  
4 THAT THEY SAID THAT THEY LEARNED THAT FROM THE VIDEOS.

5 MR. WIYGUL: NO FURTHER QUESTIONS.

6 MR. MAAZEL: ONE QUESTION.

7 THE COURT: SURE.

8 REDIRECT EXAMINATION

9 BY MR. MAAZEL:

10 Q. IN ALL OF THESE MEET AND CONFER LETTERS AND  
11 COMMUNICATIONS THAT LED TO THIS MOTION, DID THE  
12 PLAINTIFFS SAY ONE WAY OR THE OTHER HOW THEY LEARNED ANY  
13 OF THE INFORMATION ABOUT THE XL, WHETHER THESE VIDEOS OR  
14 OTHERWISE?

15 THE COURT: I'M SORRY. I DIDN'T HEAR  
16 YOUR QUESTION.

17 BY MR. MAAZEL:

18 Q. YOU WERE JUST ASKED QUESTIONS ABOUT -- WELL, DID  
19 PLAINTIFFS SAY THEY LEARNED INFORMATION FROM THE VIDEOS.  
20 DID PLAINTIFFS SAY HOW THEY LEARNED THE INFORMATION AT  
21 ALL IN THE MEET AND CONFER LETTERS?

22 A. NO. I MEAN, THE LETTERS JUST SAY WHAT YOUR  
23 COMPLAINTS WERE.

24 MR. MAAZEL: NO FURTHER QUESTIONS.

25 THE COURT: OKAY. ARE WE DONE WITH MS.

1 KOTULA?

2 OKAY. MS. KOTULA, THANK YOU FOR MAKING  
3 YOURSELF AVAILABLE. SORRY TO IMPOSE UPON YOU. I HOPE  
4 YOUR CHILD IS FEELING BETTER.

5 THE WITNESS: THANK YOU, AND YOUR HONOR,  
6 I REALLY THANK YOU AND I THANK PLAINTIFFS' COUNSEL AND  
7 EVERYBODY ACCOMMODATING ME. I TRULY APPRECIATE IT.

8 THE COURT: TAKE CARE.

9 THE WITNESS: THANK YOU. GOOD-BYE.

10 (WITNESS EXCUSED.)

11 MR. ARONCHICK: YOUR HONOR, THERE IS TWO  
12 CITY WITNESSES THAT MR. MAAZEL LISTED AS THEIR LAST TWO  
13 WITNESSES. THEY ARE BOTH HERE. I THINK ONE OF THEM IS  
14 NOT GOING TO TAKE VERY LONG. I AM NOT SURE.

15 THE COURT: OKAY.

16 MR. MAAZEL: FAMOUS LAST WORDS, IF HE  
17 WOULD.

18 MR. ARONCHICK: AND WE ARE TRYING TO  
19 AVOID SCHEDULING ISSUES.

20 MR. FIELD: SO YOUR HONOR, I BELIEVE MR.  
21 MAAZEL AND THE WITNESS LISTED THE PROCUREMENT  
22 COMMISSIONER FOLLOWED BY MR. LYNCH. I DON'T KNOW THEIR  
23 EXPECTATIONS OF TIMING.

24 MR. MAAZEL: MR. LIEB'S WITNESS.

25 MR. FIELD: WE HAVE TALKED TO MR. LIEB.



1 MR. LIEB: WHO ARE WE TALKING ABOUT?

2 MR. FIELD: THE PROCUREMENT COMMISSIONER,  
3 I PRESUME.

4 MR. LIEB: I PROBABLY HAVE 20 MINUTES, 15  
5 TO 20 MINUTES. THE ODDS OF FINISHING BEFORE 6 SEEM  
6 SLIM, BUT I THINK I CAN FINISH MY DIRECT BY THEN.

7 THE COURT: WELL, WE CAN TRY. I WOULD IF  
8 -- HAVE YOU MADE ANY DECISION, MR. ARONCHICK, ABOUT  
9 WHETHER OR NOT -- AT THIS TIME HAVE YOU MADE ANY  
10 DECISION WHETHER OR NOT YOU INTEND TO CALL MR. MAAZEL AS  
11 OF CROSS?

12 MR. ARONCHICK: YES. ASSUMING AS I'VE  
13 ASKED MR. MAAZEL THAT, TWO CITY WITNESSES ARE NOT GOING  
14 TO BE ADDRESSING NEGOTIATIONS, AND I ASSUME THEY ARE  
15 NOT. THAT'S CORRECT, THERE IS NO --

16 MR. LIEB: I CAN'T SAY THAT.

17 MR. ARONCHICK: ON THAT BASIS NO, WE  
18 WOULD NOT BE CALLING MR. MAAZEL.

19 THE COURT: OKAY. THAT'S FINE.

20 FRANKLY, I PREFER NOT TO HAVE TO DEAL  
21 WITH THE DISQUALIFICATION ISSUE.

22 ALL RIGHT THEN. WHO WOULD YOU LIKE TO  
23 CALL FIRST, MR. LIEB?

24 MR. LIEB: BEFORE I DO THAT, YOUR HONOR,  
25 I WANT TO MOVE PLAINTIFFS' 10004, TAB 4 OF THE

1 PLAINTIFFS' EXHIBIT BINDER, WHICH THE PARTIES HAVE  
2 STIPULATED IS AN AUTHENTIC PORTION OF THE CONTRACT  
3 BETWEEN THE CITY OF PHILADELPHIA AND ES&S INTO EVIDENCE.

4 MS. WALSH: YOUR HONOR -- FOR THE RECORD,  
5 DANIELLE WALSH FOR THE CITY OF PHILADELPHIA AND  
6 PHILADELPHIA COUNTY BOARD OF ELECTIONS, YOUR HONOR, WE  
7 WOULD OBJECT AT THIS TIME TO ALL OF THIS. WE HAVE  
8 STIPULATED TO THE AUTHENTICITY OF THE EXCERPT OF THE  
9 CONTRACT. WE DO HAVE A FULL COPY OF THE CONTRACT THAT I  
10 CAN PROVIDE COUNSEL.

11 THE COURT: THEY ARE TAKING THE POSITION  
12 THAT DOES SEEM TO HAVE SOME TEXTUAL SUPPORT BUT THEY  
13 HAVEN'T, IN EFFECT, INDEMNIFIED THE CITY. IF THE  
14 MACHINES ARE DECERTIFIED, THEY ARE GOING TO BEAR THAT  
15 COST.

16 NOW THERE IS A LOT OF TERRITORY BETWEEN  
17 THOSE TWO EVENTS. AND THE CITY IN ONE SCENARIO COULD  
18 EASILY BEAR THE COST ITSELF AND IN THE OTHER ES&S MIGHT  
19 BEAR THE COST OR THE COST MIGHT BE SHARED. I RATHER  
20 THINK THERE WOULD BE LITIGATION OVER IT. I THINK THE  
21 CONTRACT IS QUITE RELEVANT AND IT IS A PUBLIC DOCUMENT.  
22 I WILL OVERRULE YOUR OBJECTION.

23 MS. WALSH: THANK YOU.

24 MR. LIEB: WITH THE KNOWLEDGE THAT THE  
25 FULL CONTRACT IS ACTUALLY HERE, THAT IS SOMETHING I HAD

1 ASKED FOR IN THE BACK AND FORTH AMONG THE PARTIES PRIOR  
2 TO THE HEARING. I HAD NOT BEEN PROVIDED WITH IT. IT  
3 PROBABLY MAKES MORE SENSE TO MOVE THE ENTIRE CONTRACT  
4 INTO EVIDENCE, RATHER THAN A PORTION OF IT.

5 THE COURT: WELL, YOUR EXAMINATION IS  
6 GOING TO BE BASED -- I WOULD LIKE TO GET STARTED WITH  
7 THESE WITNESSES.

8 MR. LIEB: FAIR ENOUGH.

9 THE COURT: I DON'T WANT TO FORECLOSE  
10 ANYTHING. IF YOU WANT THE CONTRACT, YOU SHOULD HAVE THE  
11 CONTRACT AND I AM DIRECTING THE CITY TO PROVIDE IT TO  
12 YOU.

13 MR. LIEB: OKAY. WELL, LET'S BEGIN BY  
14 MOVING 1004 INTO EVIDENCE.

15 THE COURT: IT WILL BE ADMITTED.

16 (PLAINTIFFS' EXHIBIT NUMBER 1004 ADMITTED  
17 INTO EVIDENCE.)

18 MR. LIEB: AND WE CALL PROCUREMENT  
19 COMMISSIONER.

20 (MONIQUE NESMITH-JOYNER, PLAINTIFFS'  
21 WITNESS, SWORN.)

22 THE CLERK: PLEASE STATE AND SPELL YOUR  
23 NAME FOR THE RECORD.

24 THE WITNESS: YES. MY NAME IS MONIQUE  
25 NESMITH-JOYNER, M-O-N-I-Q-U-E, N-E-S-M-I-T-H, HYPHEN,

1 JOYNER, J-O-Y-N-E-R.

2 THE COURT: PLEASE BE SEATED,  
3 COMMISSIONER, AND IF YOU COULD SPEAK DIRECTLY INTO THE  
4 MICROPHONE THAT WOULD BE VERY HELPFUL.

5 DIRECT EXAMINATION

6 BY MR. LIEB:

7 Q. GOOD EVENING, COMMISSIONER. THANK YOU FOR YOUR  
8 PATIENCE OVER THE LAST COUPLE OF DAYS.

9 YOU ARE CURRENTLY THE PROCUREMENT  
10 COMMISSIONER FOR THE CITY OF PHILADELPHIA?

11 A. YES.

12 Q. AND YOU ARE THE HEAD OF THE CITY PROCUREMENT  
13 DEPARTMENT?

14 A. YES.

15 Q. IT'S YOUR RESPONSIBILITY AS PROCUREMENT  
16 COMMISSIONER TO ENSURE THAT ALL ACTIVITIES OF THE  
17 PROCUREMENT DEPARTMENT CONFORM TO THE LETTER OF THE LAW?

18 A. YES.

19 Q. YOU ARE FAMILIAR WITH THE LAW GOVERNING  
20 PROCUREMENT IN PHILADELPHIA?

21 A. YES.

22 Q. AND IT'S YOUR JOB TO MAKE SURE THAT THE  
23 DEPARTMENT FOLLOWS THAT LAW, CORRECT?

24 A. THAT'S CORRECT.

25 Q. IT'S ALSO YOUR RESPONSIBILITY AS PROCUREMENT

1 COMMISSIONER TO ENSURE THAT THE CITY PROCUREMENT NEEDS  
2 ARE MET IN A TIMELY MANNER, CORRECT?

3 A. THAT'S CORRECT.

4 Q. YOU SIGN PROCUREMENT CONTRACTS FROM TIME TO TIME  
5 IN THE COURSE OF YOUR DUTIES, YES?

6 A. YES, I DO.

7 Q. YOU REVIEW THOSE CONTRACTS BEFORE YOU SIGN THEM?

8 A. NOT IN TOTALITY.

9 Q. YOU UNDERSTAND THE TERMS OF THE CONTRACT BEFORE  
10 YOU SIGN THEM ON BEHALF OF THE CITY OF PHILADELPHIA,  
11 YES?

12 A. TERMS AND CONDITIONS ARE NEGOTIATED BY THE LAW  
13 DEPARTMENT, AND I AM NOT ALWAYS PRIVY TO WHAT THOSE  
14 TERMS AND CONDITIONS -- IF THEY CHANGE, WHAT THEY MAY  
15 BE.

16 Q. SO YOU MAY FROM TIME TO TIME SIGN A CONTRACT ON  
17 BEHALF OF THE CITY WITHOUT KNOWING WHAT IT MEANS?

18 A. WITHOUT FULLY UNDERSTANDING EXACTLY WHAT THE  
19 LEGAL LANGUAGE IS AND HOW THEY PLAN TO ENFORCE WHAT THAT  
20 LANGUAGE IS.

21 Q. YOU HAVE A GENERAL UNDERSTANDING, SURELY, OF HOW  
22 THE CITY IS GOING TO BE SPENDING ITS MONEY TO WHAT END,  
23 RIGHT?

24 A. GENERALLY.

25 THE COURT: IT'S NOT NEW YORK, MR. LIEB.

1 MR. LIEB: NEVER ASK THE COMPTROLLER THE  
2 SAME QUESTION.

3 BY MR. LIEB:

4 Q. WITH REGARD TO THE PROCUREMENT PROCESS THAT WAS  
5 -- THAT LED TO THE PURCHASE OF THE EXPRESSVOTE XL  
6 MACHINES THAT ARE AT ISSUE IN THIS MOTION, I JUST WANT  
7 TO GO OVER THAT PROCESS WITH YOU ON A GENERAL LEVEL.  
8 OKAY?

9 A. OKAY.

10 Q. FIRST THE CITY PUTS OUT WHAT IS CALLED A REQUEST  
11 FOR INFORMATION, RIGHT?

12 A. YES.

13 Q. AND IN RESPONSE TO THAT REQUEST, VENDORS WHO MAY  
14 WISH TO BE CONSIDERED PROVIDE POTENTIALLY RELEVANT  
15 INFORMATION TO THE CITY, RIGHT?

16 A. YES.

17 Q. AND THEN THE CITY CRAFTS A REQUEST FOR PROPOSAL  
18 OR RFP, RIGHT?

19 A. THEY REVIEW THE INFORMATION THAT WE RECEIVE,  
20 YES.

21 Q. OKAY. SO THE CITY REVIEWS THE INFORMATION  
22 RECEIVED IN RESPONSE TO THE REQUEST FOR INFORMATION,  
23 RIGHT?

24 A. YES.

25 Q. AND USING THAT INFORMATION, AMONG OTHER THINGS,

1 THAT CITY CRAFTS A REQUEST FOR PROPOSAL, RIGHT?

2 A. THAT'S CORRECT.

3 Q. OKAY. AND IN THE PROCESS OF PREPARING THE  
4 REQUEST FOR PROPOSAL FOR THIS SYSTEM, YOU -- THE  
5 PROCUREMENT DEPARTMENT CONSULTS WITH THE PHILADELPHIA  
6 COUNTY BOARD OF ELECTIONS, RIGHT?

7 A. THE PROCUREMENT DEPARTMENT WAS NOT INVOLVED IN  
8 THE DRAFTING OF THE RFP.

9 Q. THERE WAS A COMMITTEE THAT WAS RESPONSIBLE FOR  
10 DRAFTING THE RFP?

11 A. THE RFP WAS DRAFTED BY THE OFFICE OF INNOVATION  
12 AND TECHNOLOGY AS WELL AS THE CITY COMMISSIONERS, BOARD  
13 OF ELECTIONS.

14 Q. SO THE BOARD OF ELECTIONS WAS INVOLVED IN  
15 DRAFTING THE RFP.

16 A. YES.

17 Q. THEN THERE IS CONSULTATION WITH THE VARIOUS  
18 STAKEHOLDERS, IS IT FAIR TO SAY, RIGHT?

19 A. YES.

20 Q. THEN THE RFP IS ISSUED?

21 A. IT'S APPROVED. IT HAS TO GO THROUGH A PROCESS,  
22 YES, AND THEN IT'S ISSUED.

23 Q. APPROVED AND ISSUED, AND THEN IN RESPONSE TO THE  
24 RFP, YOU GET BIDS, RIGHT?

25 A. YOU GET PROPOSALS, YES.

1 Q. THOSE ARE REVIEWED BY A COMMITTEE, RIGHT?

2 A. THAT'S CORRECT.

3 Q. AND THE COMMITTEE IS SUPPOSED TO CHOOSE THE  
4 WINNING PROPOSAL OR BID BASED ON SOMETHING CALLED THE  
5 BEST VALUE GUIDELINES, RIGHT?

6 A. YES.

7 Q. OKAY. I AM -- WOULD LIKE TO DIRECT YOUR  
8 ATTENTION, MA'AM, IN FRONT OF YOU THERE WILL BE A BINDER  
9 OF PLAINTIFFS' EXHIBITS. CAN YOU PLEASE TURN TO TAB 4.  
10 SPECIFICALLY PAGE 16, MARKED PAGE 16 ON THE BOTTOM  
11 LEFT-HAND CORNER AND PAGE 17 OF 31 IN THE BLUE AT THE  
12 TOP.

13 ACTUALLY, I APOLOGIZE. BEFORE WE GET  
14 THERE, LET'S GO TO THE LAST PAGE OF THE EXHIBIT.

15 THE COURT: I'M SORRY. WHERE ARE WE  
16 GOING?

17 MR. LIEB: THE LAST PAGE OF THE EXHIBIT.

18 THE COURT: OKAY.

19 BY MR. LIEB:

20 Q. ON THE LAST PAGE OF THE EXHIBIT YOU SEE YOUR  
21 ELECTRONIC SIGNATURE ON BEHALF OF THE CITY OF  
22 PHILADELPHIA, CORRECT?

23 A. YES.

24 Q. THAT'S YOU ENTERING INTO THIS CONTRACT AS  
25 INTERIM PROCUREMENT COMMISSIONER ON BEHALF OF THE CITY,



1 RIGHT?

2 A. YES.

3 Q. OKAY. NOW LET'S GO BACK TO PAGE 16 AT THE  
4 BOTTOM, 17 OF 31 AT THE TOP. ARE YOU WITH ME?

5 A. YES.

6 Q. YOU SEE THE LANGUAGE IN THE BOTTOM PARAGRAPH OF  
7 THE PAGE THAT SAYS: EQUIPMENT AND PROVIDER SOFTWARE  
8 MODIFICATIONS OR REPLACEMENTS NECESSARY DUE TO  
9 DECERTIFICATION BY EITHER THE ELECTION ASSISTANCE  
10 COMMISSION OR THE COMMONWEALTH OF PENNSYLVANIA OR A  
11 FIELD ISSUE OR ANOMALY OCCURRING IN ANY FIELDED SYSTEM  
12 IN THE UNITED STATES THAT IMPACTS THE CASTING AND  
13 TABULATION OF VOTES BY THE CITY PROVIDER'S SOFTWARE MUST  
14 BE PROVIDED TO THE CITY AT NO COST, OR IT MUST BE  
15 REPLACED WITH A CERTIFIED SYSTEM AT NO COST.

16 DO YOU SEE THAT LANGUAGE?

17 A. YES.

18 Q. THAT MEANS THAT IF THE EXPRESSVOTE XL GETS  
19 DECERTIFIED, ES&S HAS TO GIVE THE CITY A NEW REPLACEMENT  
20 SYSTEM AT NO COST, RIGHT?

21 A. THAT'S WHAT IT SAYS.

22 Q. THAT'S WHAT YOU UNDERSTAND IT TO MEAN, RIGHT?

23 A. NO. THAT'S WHAT YOU UNDERSTAND. I DON'T --  
24 THIS IS WHAT THE LAW DEPARTMENT WROTE AS THEIR  
25 NEGOTIATION FOR THE CONTRACT. DO I UNDERSTAND --

1 THE COURT: YOU DID NOT CALL THE  
2 PROCUREMENT COMMISSIONER IN HERE TO HAVE HER DO MY JOB,  
3 DID YOU?

4 MR. LIEB: WELL, JUDGE --

5 THE COURT: YOU HAVE POINTED THIS OUT.  
6 IT HAS BEEN ADMITTED INTO EVIDENCE. AND IT CERTAINLY  
7 DOES SEEM TO SAY WHAT YOU WANT HER TO SAY IT SAYS. BUT  
8 I JUST DON'T SEE WHY THIS IS NECESSARY.

9 MR. LIEB: YOUR HONOR, IF THE  
10 COMMISSIONER DOESN'T HAVE AN UNDERSTANDING OF IT, I AM  
11 HAPPY TO MOVE ON. BUT I DO THINK IT'S ENTIRELY  
12 APPROPRIATE FOR PLAINTIFF TO CONFIRM THAT THIS IS IN  
13 FACT THE CITY OF PHILADELPHIA'S UNDERSTANDING OF THE  
14 CONTRACT AND THAT IT INTENDS TO PROCEED ACCORDINGLY AND  
15 NOT GO SPENDING MONEY UNNECESSARILY.

16 THE COURT: IT IS AN INTERESTING PASS THE  
17 BUCK DOCUMENT. IF YOU GO BACK TO THE LAST PAGE, IT SAYS  
18 APPROVED AS TO FORM BY THE CITY SOLICITOR'S OFFICE, AND  
19 YET THE WITNESS SAYS IT WAS APPROVED AS TO SUBSTANCE BY  
20 THE CITY SOLICITOR'S OFFICE. YOU MAY HAVE TO BRING  
21 SOMEONE ELSE IN. BUT RIGHT NOW I DON'T SEE HOW THIS  
22 WITNESS HELPS YOU.

23 BUT, GO AHEAD.

24 MS. WALSH: YOUR HONOR, AT THIS POINT I  
25 WOULD OBJECT. THE WITNESS HAS CLEARLY STATED THAT THIS

1 IS BEYOND HER PERSONAL KNOWLEDGE. SHE WAS NOT --

2 THE COURT: LET'S LET HIM ASK A FEW MORE  
3 QUESTIONS, MS. WALSH.

4 I DON'T WHOSE RESPONSIBILITY IT IS AS I  
5 LOOK AT THIS DOCUMENT.

6 MR. LIEB: JUDGE, I THOUGHT THIS WOULD BE  
7 STRAIGHTFORWARD.

8 THE COURT: GO AHEAD.

9 BY MR. LIEB:

10 Q. DO YOU, AS THE PROCUREMENT COMMISSIONER, HAVE  
11 ANY BASIS TO DISPUTE THAT ES&S IS RESPONSIBLE FOR  
12 PROVIDING PHILADELPHIA WITH REPLACEMENT EQUIPMENT IF THE  
13 EXPRESSVOTE XL IS DECERTIFIED?

14 MS. WALSH: YOUR HONOR, AGAIN, AT THIS  
15 POINT I WOULD RENEW MY OBJECTION.

16 THE COURT: SHE SAYS DOESN'T KNOW. DO  
17 YOU KNOW, COMMISSIONER?

18 THE WITNESS: CAN YOU ASK THAT QUESTION  
19 AGAIN.

20 BY MR. LIEB:

21 Q. SURE. DO YOU HAVE ANY BASIS TO DISPUTE THAT  
22 ES&S IS RESPONSIBLE FOR PROVIDING REPLACEMENT EQUIPMENT  
23 TO PHILADELPHIA IN THE EVENT THE EXPRESSVOTE XL IS  
24 DECERTIFIED?

25 A. NO.

1 MS. WALSH: YOUR HONOR --

2 THE COURT: SHE SAID NO. I WILL LET THAT  
3 ANSWER STAND.

4 BY MR. LIEB:

5 Q. DO YOU HAVE ANY BASIS TO DISPUTE THAT ES&S MUST  
6 DO SO AT NO COST TO THE CITY IN THE EVENT THE  
7 EXPRESSVOTE XL IS DECERTIFIED?

8 MS. WALSH: AND YOUR HONOR, I WOULD RENEW  
9 MY OBJECTION.

10 THE COURT: IT'S OVERRULED.

11 DO YOU KNOW, COMMISSIONER?

12 THE WITNESS: I DO NOT.

13 THE COURT: I TRULY DON'T KNOW WHAT YOU  
14 ARE DOING, BUT GO AHEAD.

15 MR. LIEB: JUDGE, I AM GOING TO MOVE ON.

16 THE COURT: OKAY. LOOK, I'M SURE THINGS  
17 WERE DIFFERENT WHEN MR. ARONCHICK WAS CITY SOLICITOR,  
18 BUT THIS IS HOW THINGS WORK NOW -- OR DON'T WORK, BUT  
19 THIS IS HOW THINGS ARE.

20 MR. ARONCHICK: BE CAREFUL. HE WILL PUT  
21 ME ON THE STAND.

22 BY MR. LIEB:

23 Q. YOU SUBMITTED A WRITTEN DECLARATION IN THIS  
24 CASE, IS THAT CORRECT, MA'AM?

25 A. YES.

1 Q. OKAY. AND THAT WAS A DOCUMENT THAT YOU SIGNED  
2 UNDER OATH, CORRECT?

3 A. YES.

4 Q. THERE IS A BINDER -- WELL, WITHDRAWN.

5 IN THAT DECLARATION YOU WROTE THAT IF THE  
6 CITY'S VOTING MACHINES ARE DECERTIFIED, THE CITY MAY  
7 HAVE TO CONDUCT ALL OF ITS PROCUREMENT PROCESSES AGAIN.  
8 DO YOU RECALL MAKING THAT STATEMENT IN YOUR DECLARATION?

9 A. CAN YOU TELL ME WHAT YOU ARE LOOKING AT,  
10 SPECIFICALLY.

11 Q. SURE. CAN WE GO TO DEFENDANT'S EXHIBIT Z, AS IN  
12 ZEBRA.

13 THE COURT: DO YOU SEE IT, COMMISSIONER?

14 THE WITNESS: YES.

15 THE COURT: OKAY.

16 BY MR. LIEB:

17 Q. PARAGRAPH 22, PAGE 4. FIRST OF ALL, MA'AM, THIS  
18 IS A COPY OF YOUR SIGNED DECLARATION, YES?

19 A. YES.

20 Q. OKAY. AT PARAGRAPH 22, PAGE 4, DO YOU SEE THE  
21 FIRST SENTENCE THAT SAYS: IF THE CITY'S VOTING MACHINES  
22 ARE DECERTIFIED, THE CITY MAY HAVE TO CONDUCT ALL OF THE  
23 ABOVE PROCUREMENT PROCESSES AGAIN?

24 A. YES.

25 Q. AND THE ABOVE PROCUREMENT PROCESSES ARE A

1 REFERENCE TO THE PROCUREMENT PROCESS THAT WAS FOLLOWED  
2 FOR THE PURCHASE OF THE EXPRESSVOTE XL, CORRECT?

3 A. YES, CORRECT.

4 Q. YOU ARE NOT AWARE OF ANY LEGAL REQUIREMENT THAT  
5 THE CITY GO THROUGH THOSE SAME PROCUREMENT PROCESSES  
6 AGAIN, ARE YOU?

7 THE COURT: DO YOU KNOW?

8 THE WITNESS: IF THE MACHINES ARE  
9 DECERTIFIED AND WE NEED TO SELECT ANOTHER MACHINE, WE DO  
10 HAVE TO GO THROUGH A PROCUREMENT PROCESS TO DO THAT.  
11 BY MR. LIEB:

12 Q. WELL, YOU SAY THE CITY "MAY" HAVE TO GO THROUGH  
13 THE PROCUREMENT PROCESS, RIGHT?

14 A. IT SAYS MAY HAVE TO GO THROUGH ALL OF THE ABOVE.  
15 WE WILL HAVE TO GO THROUGH A PROCUREMENT PROCESS.

16 Q. SO IN THE EVENT THAT THE CITY OF PHILADELPHIA  
17 NEEDS TO PURCHASE SOMETHING NEW, THE CITY WILL HAVE TO  
18 GO THROUGH SOME PROCUREMENT PROCESS, RIGHT?

19 A. YES.

20 Q. WHETHER IT NEEDS TO -- THE "MAY" APPLIES TO  
21 WHETHER IT HAS TO GO THROUGH ALL OF THE PREVIOUS THINGS,  
22 RIGHT?

23 A. THE "MAY" APPLIES TO THE TYPE OF PROCUREMENT  
24 PROCESS, YES.

25 Q. NOW, IF ES&S JUST GIVES YOU THE REPLACEMENT

1 MACHINES, YOU WON'T HAVE TO GO THROUGH A PROCUREMENT  
2 PROCESS, WILL YOU?

3 A. I DON'T KNOW THAT THAT WILL BE ACCEPTABLE TO THE  
4 CITY.

5 Q. SO IT MIGHT BE POSSIBLE THAT THE CITY WOULD  
6 ACTUALLY REJECT REPLACEMENT MACHINES PROVIDED BY ES&S  
7 BECAUSE THEY DIDN'T GO THROUGH THE PROCUREMENT PROCESS?

8 A. NO. WHAT I AM SAYING IS THAT THE CITY MAY ELECT  
9 TO GO THROUGH A FULL PROCUREMENT PROCESS IN ORDER TO  
10 DETERMINE A REPLACEMENT, IF WE HAD TO.

11 Q. OKAY. IF THE CITY WERE GIVEN REPLACEMENT  
12 MACHINES BY ES&S, IT MIGHT ELECT NONETHELESS TO GO  
13 THROUGH A PROCUREMENT PROCESS, RIGHT?

14 A. WE CAN ELECT TO GO THROUGH A PROCUREMENT  
15 PROCESS.

16 Q. BUT YOU WOULD NOT HAVE TO?

17 A. WE CAN ELECT TO. I DON'T KNOW IF WE WOULD HAVE  
18 TO OR NOT. I DON'T KNOW IF THE REPLACEMENT MACHINES  
19 WOULD MEET THE CITY'S NEEDS. WE WOULD HAVE TO GO  
20 THROUGH A PROCUREMENT PROCESS IN ORDER TO DETERMINE  
21 THAT.

22 THE COURT: COMMISSIONER, THE MACHINES --  
23 IF THESE MACHINES WERE DECERTIFIED --

24 THE WITNESS: YES.

25 THE COURT: -- BY THE STATE, AND ES&S

1 OFFERED REPLACEMENT MACHINES, AS MR. LIEB FEELS THE  
2 CONTRACT REQUIRES ES&S TO DO, DO YOU KNOW WHETHER OR NOT  
3 THE CITY IS GOING TO ACCEPT THOSE MACHINES OR NOT AS AN  
4 ADEQUATE REPLACEMENT?

5 THE WITNESS: I DO NOT.

6 THE COURT: DO YOU KNOW WHETHER OR NOT  
7 THE CITY IN AN ABUNDANCE OF CAUTION MIGHT DECIDE IT HAS  
8 TO PROCURE NEW MACHINES?

9 THE WITNESS: THE CITY COULD DECIDE THAT.

10 THE COURT: COULD DECIDE THAT. AND YOU  
11 DON'T KNOW WHAT PROCESS THE LAW WOULD REQUIRE IN THE WAY  
12 OF A NEW PROCUREMENT PROCESS. IT WOULD BE ALL OF THE  
13 PREVIOUS EVENTS, SOME OF THE PREVIOUS EVENTS?

14 THE WITNESS: YES.

15 THE COURT: OKAY.

16 BY MR. LIEB:

17 Q. THE CITY OF PHILADELPHIA DOES HAVE EMERGENCY  
18 PROCUREMENT PROCEDURES, RIGHT?

19 A. YES, WE DO.

20 Q. SOMETIMES BIG CITIES LIKE PHILADELPHIA NEED TO  
21 BUY THINGS ON A VERY QUICK TIMELINE, RIGHT?

22 A. WE DO.

23 Q. CRITICAL PIECES OF INFRASTRUCTURE CAN BREAK,  
24 RIGHT?

25 A. YES.



1 Q. THERE MIGHT NEED TO BE EQUIPMENT FOR SOME LARGE  
2 EVENT THAT WE HAVE TO CONTROL THE CROWD. THERE ARE ALL  
3 KINDS OF NEEDS THAT COULD ARISE THAT COULD CAUSE THE  
4 CITY THE NEED TO BUY SOMETHING QUICKLY, RIGHT?

5 A. YES.

6 Q. IN THOSE SITUATIONS THERE ARE EMERGENCY  
7 PROCUREMENT PROCEDURES THAT ENABLE THE CITY TO DO SO,  
8 RIGHT?

9 A. THAT'S CORRECT.

10 Q. SO FOR EXAMPLE, UNDER THE HOME RULE CHARTER, IN  
11 ORDER TO ENABLE AN AGENCY TO MEET EMERGENCIES, THE CITY  
12 CAN JUST LET THE AGENCY BUY IT DIRECTLY, RIGHT?

13 A. NO. NOT WITH -- NOT JUST LET THE AGENCY BUY IT  
14 DIRECTLY, NO. THERE WAS --  
15 BY THE COURT:

16 Q. COMMISSIONER, WHAT KINDS OF THINGS THAT YOU ARE  
17 AWARE OF -- HOW LONG HAVE YOU BEEN COMMISSIONER, INTERIM  
18 COMMISSIONER?

19 A. I HAVE BEEN COMMISSIONER FOR A YEAR.

20 Q. A YEAR. BEFORE THAT, WERE YOU INTERIM  
21 COMMISSIONER?

22 A. I WAS INTERIM -- I HAVE BEEN PERMANENT  
23 COMMISSIONER FOR SEVEN MONTHS. I WAS INTERIM FOR SIX  
24 MONTHS PRIOR.

25 Q. WERE YOU WORKING IN THE PROCUREMENT DEPARTMENT

1 BEFORE THAT?

2 A. I WAS NOT.

3 Q. OKAY. DURING YOUR TIME AS COMMISSIONER, INTERIM  
4 COMMISSIONER AND JUST BASED ON YOUR KNOWLEDGE, FIRST OF  
5 ALL, HAS THE CITY MADE ANY EMERGENCY PURCHASES DURING  
6 THAT PERIOD?

7 A. WE HAVE NOT MADE EMERGENCY PURCHASES.

8 Q. ARE YOU AWARE OF WHAT KINDS OF THINGS BEFORE YOU  
9 BECAME COMMISSIONER WERE PURCHASED ON AN EMERGENCY  
10 BASIS?

11 A. WE MAY HAVE PURCHASED, FOR EXAMPLE, IF A WATER  
12 MAIN WERE TO BREAK, AND WE WERE IN THE MIDST OF  
13 DETERMINING THE NEW CONTRACT AND THE CONTRACT FOR PIPING  
14 MAY NOT HAVE BEEN IN PLACE, WE MAY HAVE DONE AN  
15 EMERGENCY ORDER FOR SOMETHING LIKE THAT.

16 Q. THIS CONTRACT WAS FOR, DID I HEAR -- YOU SAID  
17 \$24 MILLION?

18 MS. WALSH: YOUR HONOR, IT'S 29 MILLION  
19 APPROXIMATELY.

20 BY THE COURT:

21 Q. 29. HAVE YOU HEARD OF AN EMERGENCY PURCHASE FOR  
22 \$29 MILLION THAT THE CITY HAS MADE?

23 A. NO.

24 Q. HAVE YOU HEARD OF A PURCHASE FOR \$20 MILLION  
25 THAT THE CITY HAS MADE?

1 A. NO, YOUR HONOR.

2 Q. AS FAR AS YOU KNOW, THEY ARE RATHER SMALLER?

3 A. YES, THEY ARE.

4 Q. A PIPE MIGHT COST WHAT?

5 A. A FEW THOUSAND.

6 THE COURT: OKAY. GO ON.

7 BY MR. LIEB:

8 Q. HAVE YOU HEARD OF THE CITY REJECTING EQUIPMENT  
9 NEEDED ON AN EMERGENCY BASIS WHEN IT WAS OFFERED FOR  
10 ZERO DOLLARS?

11 A. NOT TO MY KNOWLEDGE.

12 Q. ANOTHER THING THAT CAN BE DONE IS UNDER THE  
13 PHILADELPHIA CODE AWARDING A NONCOMPETITIVE CONTRACT IF  
14 THE CITY SOLICITOR CERTIFIED THAT THE CONTRACT NEEDS TO  
15 BE AWARDED IMMEDIATELY TO AVOID MATERIAL DAMAGE TO THE  
16 LEGAL INTERESTS OF THE CITY, RIGHT?

17 MS. WALSH: OBJECTION, RELEVANCE.

18 THE COURT: NO, NO. I WILL OVERRULE  
19 THAT.

20 DO YOU KNOW, COMMISSIONER?

21 THE WITNESS: YES.

22 THE COURT: IS HE RIGHT?

23 THE WITNESS: YES.

24 THE COURT: HAS THAT HAPPENED DURING YOUR  
25 TIME AS COMMISSIONER?

1 THE WITNESS: IT HAS NOT.

2 THE COURT: HAVE YOU HEARD OF IT  
3 HAPPENING AT ALL?

4 THE WITNESS: NO, I HAVE NOT.

5 THE COURT: OKAY.

6 BY MR. LIEB:

7 Q. BUT YOU WOULD AGREE WITH ME THAT MAKING SURE THE  
8 REGISTERED VOTERS OF PHILADELPHIA CAN VOTE IN AN  
9 UPCOMING ELECTION IS VERY IMPORTANT, RIGHT?

10 A. YES.

11 Q. AND YOU WOULD --

12 THE COURT: BY THE WAY, THESE EMERGENCY  
13 PURCHASES, WOULD THESE BE YOUR DECISIONS OR THE MAYOR'S?

14 THE WITNESS: IT'S ACTUALLY A JOINT  
15 DECISION WITH THE LAW DEPARTMENT. SOMETHING OF THIS  
16 MAGNITUDE I WOULD IMAGINE WOULD INCLUDE THE MAYOR'S  
17 OFFICE AS WELL AS THE BOARD OF ELECTIONS.

18 THE COURT: I AM TALKING NOT JUST ABOUT  
19 THE MACHINES. JUST GENERALLY WITH EMERGENCY  
20 PURCHASES -- WELL, YOU HAVE DESCRIBED ONLY ONE THAT YOU  
21 ARE AWARE OF.

22 THE WITNESS: YES.

23 THE COURT: BUT A SIZEABLE PURCHASE OF  
24 ANY KIND -- CERTAINLY A SIZEABLE MEANING EIGHT FIGURES,  
25 EMERGENCY PURCHASE, WOULD THAT BE YOUR DECISION ALONE?

1 THE WITNESS: NO, ABSOLUTELY NOT.

2 BY MR. LIEB:

3 Q. WITH REGARD TO THE EXPRESSVOTE XL CONTRACT, IN  
4 ADDITION TO THE MACHINES THEMSELVES, THERE WERE ALSO  
5 CERTAIN OTHER PURCHASES OR PROCUREMENTS THAT THE CITY  
6 MADE THAT WERE INCIDENTAL TO THE VOTING SYSTEMS,  
7 CORRECT?

8 A. YES.

9 Q. FOR EXAMPLE, THE CITY NEEDED -- OR I GUESS THE  
10 BOARD OF ELECTIONS NEEDED A NEW WAREHOUSE TO STORE THE  
11 MACHINES, RIGHT?

12 A. YES.

13 Q. AND THE CITY ENTERED INTO A ONE-YEAR LEASE FOR  
14 \$777,000 FOR THAT PURPOSE, RIGHT?

15 A. YES. MIGHT I ADD, THAT IS THROUGH THE  
16 DEPARTMENT OF PUBLIC PROPERTY. THAT'S NOT THROUGH  
17 PROCUREMENT.

18 Q. IRRESPECTIVE OF THE ROUTE, THOUGH, I AM CORRECT  
19 THAT THE EXPENDITURE WAS A ONE-YEAR LEASE OF \$777,000.

20 A. TO MY KNOWLEDGE, YES.

21 Q. AND THERE WERE ALSO, I GUESS, SPECIAL VEHICLES  
22 WITH RAMPS THAT WERE NEEDED TO TRANSPORT THE MACHINES, I  
23 GUESS, HAVE TO ROLL THEM ALL IN AND OUT?

24 A. YES.

25 Q. AND THE CITY SPENT \$87,000 ON THOSE VEHICLES?

1       A.           THAT'S MY UNDERSTANDING.

2       Q.           THERE WAS ALSO \$1.5 MILLION PAID TO -- OR THERE  
3       WAS AT ONE POINT AN AGREEMENT TO PAY \$1.5 MILLION TO A  
4       CONSULTANT TO PROVIDE GUIDANCE ON THE ROLLOUT OF THE  
5       MACHINES, CORRECT?

6                   MS. WALSH: YOUR HONOR, AT THIS POINT I  
7       WOULD JUST OBJECT THAT MANY OF THIS IS OUTSIDE OF HER  
8       KNOWLEDGE. I DON'T THINK THERE HAS BEEN ANY FOUNDATION.

9                   THE COURT: IF IT IS, I AM SURE SHE WILL  
10      TELL US. OVERRULED.

11                   WHY DON'T YOU REPEAT THE QUESTION.

12      BY MR. LIEB:

13      Q.           SURE. THERE WAS AT SOME POINT AN AGREEMENT TO  
14      PAY \$1.5 MILLION TO A CONSULTANT TO PROVIDE GUIDANCE ON  
15      THE ROLLOUT OF THE EXPRESSVOTE XL MACHINES, CORRECT?

16      A.           TO MY KNOWLEDGE. BUT I WILL ALSO ADD IT'S  
17      THROUGH OUR PROFESSIONAL SERVICES. IT IS NOT THROUGH  
18      OUR PROCUREMENT DEPARTMENT, SO I CAN'T SPEAK TO THE  
19      PARTICULARS OF THAT.

20                   THE COURT: I'M SORRY, MR. LIEB. WHEN I  
21      GOT HERE FROM NEW YORK IN 1974, I WAS AS CONFUSED AS YOU  
22      SEEM TO BE ABOUT HOW THE CITY WORKS.

23      BY MR. LIEB:

24      Q.           FIRST OF ALL, TO YOUR KNOWLEDGE, WHO WAS THE  
25      CONSULTANT?

1 A. I DON'T KNOW.

2 Q. HAS THE \$1.5 MILLION BEEN PAID, TO YOUR  
3 KNOWLEDGE?

4 A. I DON'T KNOW.

5 Q. BUT EVEN ASSUMING THE \$1.5 MILLION WAS PAID,  
6 WHEN YOU ADD THOSE THINGS UP, THAT'S ABOUT \$2.4 MILLION  
7 IN EXPENSES INCIDENTAL TO THE MAIN ES&S CONTRACT, RIGHT?

8 A. OKAY.

9 Q. WELL, YOU WOULD AGREE WITH ME THAT 777,000,  
10 87,000, 1.5 MILLION, BALLPARK LESS THAN 2.4?

11 A. OKAY.

12 Q. AND UNDER THE EXPRESSVOTE XL CONTRACT, ES&S  
13 ACTUALLY PAID A \$2.9 MILLION PENALTY TO THE CITY, RIGHT?

14 MS. WALSH: OBJECTION, YOUR HONOR.

15 THE COURT: OVERRULED. IF SHE KNOWS.

16 THE WITNESS: I UNDERSTAND THERE WAS AN  
17 AGREEMENT. I DO NOT KNOW WHAT THE TERMS OF THAT  
18 AGREEMENT WERE OR WHAT WAS PAID OR WHAT THE AGREEMENT  
19 ENTAILED.

20 BY MR. LIEB:

21 Q. ARE YOU FAMILIAR WITH THE AMOUNT IN QUESTION  
22 BEING \$2.9 MILLION?

23 A. YES.

24 Q. OKAY. SO THAT PENALTY PAID FROM ES&S TO THE  
25 CITY, ASSUMING THAT HAPPENED, IS ACTUALLY MORE THAN THE

1        INCIDENTAL EXPENSES THAT THE CITY INCURRED ON THINGS  
2        OTHER THAN MACHINES THEMSELVES, RIGHT?

3        A.            YES.

4        Q.            NOW, IF THE COURT ORDERS THAT THE EXPRESSVOTE XL  
5        BE DECERTIFIED -- WELL, WITHDRAWN.

6                    YOU ARE AWARE THAT -- WITHDRAWN.

7                    ARE YOU AWARE THAT PHILADELPHIA DOES NOT  
8        CONTROL WHAT VOTING MACHINES ARE CERTIFIED FOR USE IN  
9        THE STATE OF PENNSYLVANIA?

10      A.            WHAT DO YOU MEAN BY -- YES.

11      Q.            THE STATE OF PENNSYLVANIA CERTIFIES ANY NUMBER  
12      OF MACHINES.

13      A.            YES.

14      Q.            AND THOSE MACHINES ARE ALSO CERTIFIED BY THE  
15      FEDERAL GOVERNMENT, RIGHT?

16      A.            ON MY UNDERSTANDING THROUGH THIS LAST COUPLE OF  
17      DAYS.

18                    THE COURT:    YOU HAVE BEEN SITTING HERE --

19                    THE WITNESS:   YES, FOR THE LAST COUPLE OF  
20      DAYS.

21                    THE COURT:    -- FOR THE LAST SEVERAL DAYS.  
22      YOUR UNDERSTANDING IS BASED ON WHAT YOU HEARD HERE IN  
23      COURT.

24                    THE WITNESS:   YES.

25                    THE COURT:    OKAY.



1 BY MR. LIEB:

2 Q. PHILADELPHIA CHOSE THE EXPRESSVOTE XL FROM AMONG  
3 THOSE MACHINES, YES?

4 A. YES.

5 Q. IF THE FEDERAL GOVERNMENT WERE TO UNEXPECTEDLY  
6 DECERTIFY THIS MACHINE TOMORROW BECAUSE OF SOME  
7 UNANTICIPATED SECURITY FLAW THAT HAD NOTHING TO DO WITH  
8 THIS CASE OR THIS LITIGATION OR ANYTHING, WHAT ARE SOME  
9 OF THE STEPS THAT THE CITY OF PHILADELPHIA COULD TAKE TO  
10 GET VOTING MACHINES PURCHASED ASAP?

11 MS. WALSH: AND YOUR HONOR, AT THIS POINT  
12 I WOULD JUST OBJECT TO OUTSIDE OF HER SCOPE --

13 THE COURT: OVERRULED. THIS IS SOMETHING  
14 THAT I ASKED -- THE QUESTION I ASKED THE PARTIES TO  
15 ANSWER.

16 GO AHEAD. IF YOU KNOW.

17 THE WITNESS: WE WOULD NEED TO WAIT FOR  
18 THE STATE DIRECTIVE, OF COURSE. I UNDERSTAND THE  
19 FEDERAL GOVERNMENT. YOU ARE SAYING WOULD DECERTIFY,  
20 THEN THAT WOULD COME TO US THROUGH THE STATE. I WOULD  
21 ASSUME WHAT WE WOULD NEED TO DO IN ORDER TO PROCURE, WE  
22 CERTAINLY WOULD NEED TO HAVE A CONVERSATION WITH  
23 MULTIPLE OFFICES TO DETERMINE WHAT WOULD BE FEASIBLE.  
24 IN MY OPINION, WE WOULD NEED TO GO THROUGH ANOTHER BEST  
25 VALUE PROCESS.

1 BY MR. LIEB:

2 Q. BUT IF THERE WAS A DECERTIFICATION ORDERED BY  
3 THE FEDERAL GOVERNMENT HAVING NOTHING TO DO WITH THIS  
4 LITIGATION, SURELY THE PROCUREMENT DEPARTMENT WOULD DO  
5 SOMETHING TO MAKE SURE THAT THERE WERE VOTING MACHINES  
6 IN PLACE FOR THE NOVEMBER 2020 GENERAL ELECTION, RIGHT?

7 A. AND THE BEST VALUE PROCESS IS A PROCUREMENT  
8 METHOD.

9 Q. AND THAT PROCESS COULD BE COMPLETED IN TIME TO  
10 GET THOSE MACHINES UP AND RUNNING FOR NOVEMBER 2020,  
11 RIGHT?

12 A. I DID NOT SAY THAT.

13 Q. WELL, IF THE BEST VALUE PROCESS COULD NOT BE  
14 COMPLETED IN TIME FOR -- TO GET THOSE MACHINES UP AND  
15 RUNNING FOR 2020, YOU COULD USE EMERGENCY PROCUREMENT  
16 POWERS, RIGHT?

17 THE COURT: YOU ARE GOING OVER THE SAME  
18 MATERIALS. I UNDERSTAND WHY YOU CALLED THIS WITNESS,  
19 BUT IT'S BASED ON A FLAWED UNDERSTANDING OF HOW THE  
20 GOVERNMENT IN PHILADELPHIA WORKS. THESE ARE NOT HER  
21 DECISIONS. SHE'S TESTIFIED TO THAT. SO THAT YOU ARE  
22 SAYING THINGS THAT AS PROCUREMENT COMMISSIONER REALLY  
23 ARE NOT IN HER BAILIWICK. SURELY THE CITY WOULD WANT TO  
24 MAKE SURE THAT THERE WOULD BE MACHINES. PRESUMABLY  
25 EVERYONE IN THE CITY WOULD WANT TO ENSURE IT, BUT THAT

1 WOULD NOT BE HER RESPONSIBILITY ALONE. SHE HAS ALREADY  
2 TOLD YOU THAT.

3 BY MR. LIEB:

4 Q. IN YOUR DECLARATION, DEFENSE EXHIBIT Z, PAGE 5,  
5 PARAGRAPH 29, YOU WROTE: I EXPECT THAT THE ENTIRE  
6 PROCUREMENT PROCESS FOR A NEW VOTING SYSTEM WOULD TAKE  
7 18 TO 24 MONTHS AT A MINIMUM.

8 DO YOU SEE THAT LANGUAGE?

9 A. YES.

10 THE COURT: WHAT PARAGRAPH?

11 MR. LIEB: PARAGRAPH 29, LAST PARAGRAPH.

12 THE COURT: OKAY.

13 BY MR. LIEB:

14 Q. WAS THAT ESTIMATE BASED UPON YOUR PERSONAL  
15 KNOWLEDGE OF HOW THE CITY PROCUREMENT PROCESSES WORK?

16 A. THAT ESTIMATE WAS BASED ON HOW PROCUREMENT  
17 PROCESSES CAN WORK, YES.

18 Q. ARE THERE OTHER WAYS THAT PROCUREMENT PROCESSES  
19 CAN WORK TO HAPPEN MORE QUICKLY?

20 A. TO HAPPEN MORE QUICKLY?

21 Q. YEAH.

22 A. THERE ARE A NUMBER OF THINGS THAT GO INTO  
23 PROCURING SOMETHING OF THIS MAGNITUDE THAT ARE BEYOND  
24 JUST THE PROCUREMENT PROCESS, THINGS THAT PROCUREMENT IS  
25 NOT ABLE TO CONTROL, INCLUDING CITY COUNCIL AND THE

1       AMOUNT OF -- NUMBER OF TIMES THAT YOU WOULD HAVE TO GO  
2       BEFORE CITY COUNCIL IN ORDER TO MOVE SOMETHING LIKE THIS  
3       THROUGH. THAT IS NOT NECESSARILY INCLUDED OR PART OF  
4       THE PROCUREMENT PROCESS. THERE IS ALSO A COMMITTEE THAT  
5       HAS TO REVIEW THE RFP, AND ANY RFP OVER \$2 MILLION  
6       BEFORE IT IS EVEN ISSUED OR POSTED. YOU CAN'T CONTROL  
7       THAT PROCESS EITHER.

8       Q.       THAT'S THE LCORC?

9       A.       YES.

10      Q.       WHICH ONLY MEETS ONCE A MONTH?

11      A.       THAT'S CORRECT.

12      Q.       SO IN AN EMERGENCY SITUATION WHERE THE MACHINE  
13      HAS BEEN DECERTIFIED, GETTING NEW VOTING MACHINES MIGHT  
14      BE HELD UP BECAUSE THAT COMMITTEE ONLY MEETS ONCE A  
15      MONTH?

16      A.       I DIDN'T SAY THAT. YOU ASKED ME ABOUT THE 18 TO  
17      24 MONTHS AND MY KNOWLEDGE ABOUT THE PROCUREMENT  
18      PROCESS. I AM SAYING THAT THE LCORC AS WE CALL IT AND  
19      CITY COUNCIL PROCEEDINGS ARE NOT WITHIN PROCUREMENT'S  
20      CONTROL. I CANNOT SPEAK TO HOW LONG IT MAY TAKE,  
21      WHETHER THEY WOULD MEET EXPEDITIOUSLY TO APPROVE OR NOT,  
22      I CANNOT SPEAK TO THAT.

23      Q.       YOU HAVE NO PERSONAL KNOWLEDGE OF WHAT THE CITY  
24      COUNCIL WOULD DO ONE WAY OR THE OTHER, CORRECT?

25      A.       THAT'S CORRECT.

1 Q. YOU HAVE NO PERSONAL KNOWLEDGE OF WHAT THE LCORC  
2 WOULD DO ONE WAY OR THE OTHER, CORRECT?

3 A. IN THIS CIRCUMSTANCE, NO, I DON'T.

4 Q. OKAY. BUT YOU DID SUBMIT A WRITTEN DECLARATION  
5 UNDER OATH TALKING ABOUT WHAT THE BODIES MIGHT DO BASED  
6 ON PERSONAL KNOWLEDGE, RIGHT?

7 A. I SPOKE ABOUT HOW OFTEN THEY MEET IN TERMS OF  
8 THE LCORC, BUT I DID NOT SPEAK ABOUT HOW OFTEN CITY  
9 COUNCIL MEETS AND WHEN THEY APPROVE THINGS.

10 Q. TO YOUR KNOWLEDGE, IS THERE ANY WAY OF -- IN AN  
11 EMERGENCY OF AVOIDING THE REQUIREMENT THAT THE RFP GO  
12 THROUGH THE LCORC THAT ONLY MEETS ONCE A MONTH?

13 A. SAY THAT AGAIN.

14 Q. TO YOUR KNOWLEDGE IN AN EMERGENCY, IS THERE ANY  
15 WAY OF AVOIDING THE REQUIREMENT THAT THE RFP GO THROUGH  
16 LCORC, WHICH ONLY MEETS ONCE A MONTH?

17 A. NO, I DON'T KNOW.

18 Q. A VOTING SYSTEM COMPANY CALLED DOMINION ALSO  
19 ISSUED AN RFP IN RESPONSE -- SORRY, ALSO ISSUED A  
20 PROPOSAL, SUBMITTED A PROPOSAL IN RESPONSE IN THE RFP  
21 ISSUED BY THE CITY, CORRECT?

22 A. YES.

23 Q. OKAY. AND THAT WAS ONE OF SIX RESPONSES TO THE  
24 RFP?

25 A. TO MY KNOWLEDGE, YES.

1 Q. AND THAT WAS A PROPOSAL TO USE HAND-MARKED PAPER  
2 BALLOTS WITH OPTICAL SCANNERS, RIGHT?

3 A. I WAS NOT PART OF THE SELECTION COMMITTEE. I  
4 DID NOT REVIEW THE PROPOSAL.

5 Q. THAT PROPOSAL WAS ABOUT \$3 MILLION LESS THAN  
6 ES&S?

7 A. I'M NOT SURE.

8 THE COURT: IT'S 6 O'CLOCK. HOW MUCH  
9 MORE DO YOU HAVE OF THIS WITNESS?

10 MR. LIEB: GIVEN HER LACK OF KNOWLEDGE,  
11 NOTHING.

12 THE COURT: OKAY. DO YOU WISH TO EXAMINE  
13 THIS WITNESS AT ALL?

14 MS. WALSH: I DO HAVE A VERY BRIEF  
15 EXAMINATION OF THE WITNESS JUST TO ANSWER SOME OF THE  
16 QUESTIONS THAT THE COURT POSED IN ITS ORDER.

17 THE COURT: WELL, THAT'S -- MR. LIEB IS  
18 GOING TO WANT TO FOLLOW UP ON THAT AND HE HAS EVERY  
19 RIGHT TO.

20 I HATE TO TELL YOU THIS, COMMISSIONER,  
21 BUT I THINK WE ARE GOING TO NEED TO HAVE YOU BACK HERE  
22 TOMORROW. I SAW YOU SITTING BACK THERE PATIENTLY ALL  
23 DAY. I APOLOGIZE.

24 THE WITNESS: NO PROBLEM.

25 THE COURT: YES, MR. FIELD, DO YOU WANT

1 TO SAY SOMETHING?

2 MR. FIELD: I THOUGHT WE MIGHT BE MOVING  
3 TO SCHEDULING, YOUR HONOR.

4 THE COURT: WE ARE.

5 THANK YOU, COMMISSIONER.

6 THE WITNESS: THANK YOU.

7 THE COURT: WE ARE NOT SURE WHEN YOU WILL  
8 BE BROUGHT BACK. WE ARE NOT SURE WHEN THE HEARING WILL  
9 RESUME, BUT IT WILL BE OBVIOUSLY WHEN YOU CAN TAKE TIME  
10 OUT OF YOUR DUTIES TO BE HERE. THANK YOU.

11 THE WITNESS: THANK YOU.

12 (WITNESS EXCUSED.)

13 MR. ARONCHICK: WE TRIED TO FIGURE OUT  
14 SOME SCHEDULING OVER THE NEXT FEW DAYS. THE PROBLEM IS  
15 NEITHER THE PLAINTIFFS' COUNSEL ARE AVAILABLE TOMORROW.

16 THE COURT: OKAY.

17 MR. ARONCHICK: THAT'S PROBLEM ONE.  
18 PROBLEM TWO IS ON FRIDAY -- AND THIS IS PERHAPS LESS OF  
19 A PROBLEM, I AND MR. MAAZEL ARE NOT AVAILABLE, BUT MR.  
20 WIYGUL AND MR. LIEB ARE AVAILABLE. I THINK MR. FIELD IS  
21 AVAILABLE AND IF YOU --

22 THE COURT: YOU DON'T HAVE TO BE HERE IF  
23 YOUR CLIENTS DON'T NEED YOU. AS MUCH AS I ENJOY THE  
24 COMPANY OF THE TWO OF TWO, THAT'S OKAY.

25 MR. ARONCHICK: SO FRIDAY, THAT IS A

1 POSSIBLE DAY FOR OTHER LAWYERS. I UNDERSTAND THAT MR.  
2 LYNCH IS AVAILABLE ON FRIDAY, THE OTHER WITNESS, IS THAT  
3 TRUE?

4 MR. FIELD: OUR WITNESSES ARE AVAILABLE  
5 ON FRIDAY.

6 THE COURT: VERY GOOD. I DON'T KNOW WHAT  
7 I HAVE, BUT I WILL CLEAR IT.

8 MR. ARONCHICK: OKAY. AND SO THE  
9 ALTERNATE DATE WHERE EVERYONE IS PERHAPS AVAILABLE IS  
10 NOT UNTIL NEXT TUESDAY.

11 MR. FIELD: NO. NEXT TUESDAY -- MR.  
12 LYNCH WOULD NOT ACTUALLY BE UNTIL MARCH.

13 MR. ARONCHICK: SO FRIDAY.

14 MR. MAAZEL: FRIDAY.

15 THE COURT: WELL, IF WE CAN FINISH IT UP  
16 BY FRIDAY, THAT'S FINE, AND I AM GOING TO ASK FOR A  
17 PROPOSED FINDINGS AND CONCLUSIONS, AS YOU MIGHT EXPECT,  
18 AT THE CONCLUSION OF THE HEARING. RIGHT NOW, IT'S TOO  
19 SOON TO ASK WHETHER OR NOT ANYBODY CONTEMPLATES REBUTTAL  
20 OR SURREBUTTAL WITNESSES. BUT IT WOULDN'T BE TOO SOON  
21 ON FRIDAY.

22 ANYTHING ELSE?

23 MR. ARONCHICK: JUST THAT IF YOU STARTED  
24 ON 9 O'CLOCK ON FRIDAY JUST IN CASE I SURPRISE YOU, I  
25 MIGHT BE ABLE TO BE HERE FOR AN HOUR.



1 THE COURT: I CAN'T THINK OF A BETTER  
2 INDUCEMENT. WE WILL START AT 9 O'CLOCK.

3 CAN YOU BE HERE, MR. LIEB, AT 9 O'CLOCK?

4 MR. LIEB: IF THAT IS THE COURT'S  
5 PLEASURE, I WILL BE HERE.

6 THE COURT: ANYTHING ELSE?

7 MR. LIEB: THERE IS ONE POINT I WANTED TO  
8 PUT ON THE RECORD THAT I THINK MAY BE PRODUCTIVE TO DO  
9 IN ADVANCE OF FRIDAY, JUST IN CASE THERE IS GOING TO BE  
10 A PRODUCTION OF THE DOCUMENTS. THERE WAS CONVERSATION  
11 YESTERDAY ABOUT THE DEFENDANT'S MEDIATION STATEMENT.  
12 THE COURT HAD INDICATED MAYBE IT'S SOMETHING WE WOULD  
13 WANT TO SUBPOENA. I DIDN'T THINK IT WAS REALLY A  
14 SUBPOENA, BECAUSE THEY ARE PARTIES. I MADE A REQUEST TO  
15 MR. WIYGUL TO PRODUCE THAT DOCUMENT. HE INDICATED HE  
16 HAD TO CONFER WITH HIS CLIENTS. I THINK IT WOULD BE  
17 PRODUCTIVE FOR COUNSEL TO PUT ON THE RECORD THEIR  
18 POSITION WITH REGARD TO PRODUCTION OF THAT DOCUMENT.

19 THE COURT: WELL, UNLESS YOU HAVE A LEGAL  
20 REASON FOR IT, I WOULD LIKE YOU TO PRODUCE THE DOCUMENT.

21 MR. WIYGUL: WE DO HAVE A LEGAL  
22 OBJECTION. I WOULD LIKE TO PUT ON THE RECORD.

23 THE COURT: NO. NO. TELL ME WHAT THE  
24 LEGAL REASON IS.

25 MR. WIYGUL: I THINK THERE ARE SEVERAL.

1 FIRST OF ALL, REALLY NOT -- I DON'T SEE THE RELEVANCE.  
2 IT DIDN'T GO TO THE OTHER SIDE.

3 THE COURT: THAT'S OVERRULED. GO AHEAD.

4 MR. WIYGUL: THE SECOND ONE IS I THINK  
5 THERE IS AT LEAST ARGUABLY A MEDIATION PRIVILEGE THAT  
6 WOULD APPLY IN THIS CASE.

7 THE COURT: I THINK THAT PRIVILEGE HAS  
8 BEEN WAIVED, GIVEN THAT THE PARTIES HAVE DISCUSSED THE  
9 TERMS AND NEGOTIATIONS AND THE DETAILS OF THE MEDIATION.  
10 SO THAT'S OVERRULED.

11 MR. WIYGUL: OKAY. THE COURT APPRECIATES  
12 THAT THIS PARTICULAR COMMUNICATION WAS EX PARTE.

13 THE COURT: I AM A PROFESSIONAL. I HAVE  
14 DONE THAT. I HAVE DONE THAT AS WELL. I HAVE ASKED FOR  
15 EX PARTE. THEY ARE GENERALLY QUITE USELESS, BUT I GET  
16 THEM ALL THE TIME. THEY GENERALLY ARE A REPETITION OF  
17 THE BRIEF THE PARTY EITHER HAS SUBMITTED OR WILL SUBMIT.

18 MR. ARONCHICK: YOUR HONOR, MR. WIYGUL  
19 WAS JUST PUTTING THE OBJECTION ON THE RECORD. WE WILL  
20 PRODUCE IT AND FRANKLY IT DOESN'T -- IT HELPS US.

21 THE COURT: I AM NOT SURPRISED. I REALLY  
22 I AM NOT SURPRISED. I CAN SEE WHY THE STATE WOULD NOT  
23 WANT ITS MEDIATION POSITION IN WRITING.

24 MR. ARONCHICK: EXACTLY.

25 THE COURT: PUT INTO THE PUBLIC RECORD.

1 I GET IT. AND I WOULD NORMALLY NOT WANT TO ORDER IT,  
2 BUT I THINK IN THE CIRCUMSTANCES PRESENTED, IT WOULD BE  
3 GOOD IF YOU PRODUCE IT TO THE OTHER SIDE AND YOU CAN DO  
4 WITH IT WHAT YOU WILL.

5 MR. ARONCHICK: CAN I ESTABLISH ONE  
6 THING?

7 THE COURT: YES.

8 MR. ARONCHICK: CLEARLY BECAUSE OUR CASE  
9 MEANING THE ACTUAL CASE THAT WE PUT ON, WAS ONLY MR.  
10 BAUMERT. THE OTHER WITNESSES WERE THEIRS. SO TO THE  
11 EXTENT THAT THERE IS GOING TO BE ANY REBUTTAL THAT IS  
12 OFFERED, IT'S LIMITED TO MR. BAUMERT. IN OTHER WORDS --

13 THE COURT: I UNDERSTAND, AND I THINK  
14 THEY UNDERSTAND.

15 MR. ARONCHICK: YES.

16 THE COURT: AND IF AS YOU STAND THERE,  
17 MR. MAAZEL, YOU ANTICIPATE ANY REBUTTAL?

18 MR. MAAZEL: NO.

19 THE COURT: OKAY.

20 MR. WIYGUL: YOUR HONOR, MAY I MAKE ONE  
21 ADDITIONAL POINT ON THE MEDIATION STATEMENT?

22 THE COURT: YES.

23 MR. WIYGUL: MY UNDERSTANDING IS THAT  
24 THERE IS A SENTENCE OR TWO IN THERE PROVIDING TO THE  
25 MAGISTRATE JUDGE MY CLIENT'S OPINION ABOUT THE POTENTIAL

1       VALUE OF THE CASE IN TERMS OF AN ATTORNEY'S FEE NUMBER.

2       I DON'T THINK THAT PART IS REALLY RELEVANT WITH YOUR  
3       HONOR --

4                   THE COURT:   NO.   IF IT EMBARRASSES  
5       ANYONE, I BELIEVE THE CLAIM WAS FOR HALF A MILLION  
6       DOLLARS IN ATTORNEYS' FEES.   I SEEM TO REMEMBER SEEING  
7       THAT.   YOU ARE A BARGAIN, MR. MAAZEL.   NO, I THINK THAT  
8       IT ALL GOES.

9                   MR. WIYGUL:   OKAY.   THANK YOU, YOUR  
10       HONOR.

11                  THE COURT:   ANYTHING ELSE?

12                  MR. FIELD:   YOUR HONOR, ONE REQUEST OF  
13       THE COURT UNLESS THE COURT THINKS THE VOTING MACHINE IS  
14       NECESSARY --

15                  THE COURT:   CAN YOU GET THAT THING OUT OF  
16       MY COURTROOM?

17                  MR. FIELD:   WE WILL REMOVE IT.

18                  THE COURT:   PLEASE.   YOU MAY HAVE TO WAIT  
19       UNTIL TOMORROW MORNING.   I DON'T KNOW IF THE LOADING  
20       DOCK IS EVEN OPEN NOW.

21                  MR. FIELD:   WE WILL WORK WITH MR.  
22       BRADLEY.

23                  THE COURT:   I THINK, AS CAPABLE AS MR.  
24       BRADLEY IS, I DON'T THINK HE CAN OPEN THE LOADING DOCK.

25                  MR. MAAZEL:   I KNOW YOUR HONOR HAS NEW

1 YORK ROOTS, BUT I HAVE SOME PENNSYLVANIA ROOTS. I AM  
2 REFERRED TO AS A NEW YORKER. I DO HAVE PENNSYLVANIA  
3 ROOTS.

4 THE COURT: I AM DELIGHTED TO HEAR IT.

5 GOOD NIGHT, EVERYBODY.

6 MR. ARONCHICK: 9 O'CLOCK FRIDAY.

7 (COURT ADJOURNED.)

8

9

10 I CERTIFY THAT THE FOREGOING IS A CORRECT  
11 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
12 ABOVE-ENTITLED MATTER.

13

14

2/20/20  
DATE

  
OFFICIAL COURT REPORTER  
LYNN GLIGOR, RMR.

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25

1 I N D E X

2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 ALEX HALDERMAN

4 BY MR. MAAZEL 3 -- 167 --

5 BY MR. WIYGUL -- 48 -- --

6 DEAN BAUMERT

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12 MONIQUE NESMITH-JOYNER

13 BY MR. LIEB 324 -- -- --

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